

105TH CONGRESS
1ST SESSION

S. 1415

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. BREAUX, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Universal Tobacco Settlement Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

- Sec. 100. Definitions.

Subtitle A—Restriction on Marketing and Advertising

- Sec. 101. Prohibitions on advertising.
- Sec. 102. General restrictions.
- Sec. 103. Format and content requirements for labeling and advertising.
- Sec. 104. Statement of intended use.
- Sec. 105. Ban on nontobacco items and services, contests and games of chance, and sponsorship of events.
- Sec. 106. Use of product descriptors.

Subtitle B—Warnings, Labeling and Packaging

- Sec. 111. Cigarette warnings.
- Sec. 112. Smokeless tobacco warnings.
- Sec. 113. Ingredients.
- Sec. 114. Enforcement, regulations, and construction.
- Sec. 115. Preemption.
- Sec. 116. Reports.
- Sec. 117. Exports.
- Sec. 118. Repeals.

Subtitle C—Restriction on Access to Tobacco Products

- Sec. 121. Requirements relating to retailers.
- Sec. 122. Manufacture, sale, and distribution.

Subtitle D—Licensing of Retail Tobacco Sellers

- Sec. 131. Establishment of program.
- Sec. 132. Requirements.
- Sec. 133. Penalties, revocations and suspensions.
- Sec. 134. Federal licensing of military and other entities.

Subtitle E—Regulation of Tobacco Product Development and Manufacturing

- Sec. 141. Reference.
- Sec. 142. Treatment of tobacco products as drugs.
- Sec. 143. Health and safety regulation of tobacco products.

Subtitle F—Compliance Plans and Corporate Culture

- Sec. 151. Compliance plans.
- Sec. 152. Compliance programs.
- Sec. 153. Whistleblower protections.
- Sec. 154. Provisions relating to lobbying.
- Sec. 155. Termination of certain entities.
- Sec. 156. Enforcement.

TITLE II—REDUCTION IN UNDERAGE TOBACCO USE

- Sec. 201. Purpose.

- Sec. 202. Determination of underage use base percentages.
- Sec. 203. Annual daily incidence of underage use of tobacco products.
- Sec. 204. Required reduction in underage tobacco use.
- Sec. 205. Application of surcharges.
- Sec. 206. Abatement procedures.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

- Sec. 301. Definitions.
- Sec. 302. Smoke-free environment policy.
- Sec. 303. Citizen actions.
- Sec. 304. Preemption.
- Sec. 305. Regulations.
- Sec. 306. Effective date.

TITLE IV—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Public Health Block Grant Program

- Sec. 401. Public Health Trust Fund.
- Sec. 402. Block grants to States.
- Sec. 403. Allotments.
- Sec. 404. Use of funds.
- Sec. 405. Withholding of funds.

Subtitle B—Other Programs

- Sec. 411. National Smoking Cessation Program.
- Sec. 412. National Reduction in Tobacco Usage Program.
- Sec. 413. National Tobacco-Free Public Education Program.
- Sec. 414. National Event Sponsorship Program.
- Sec. 415. National Community Action Program.
- Sec. 416. National Cessation Research Program.
- Sec. 417. Use of surcharge payments.

TITLE V—CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

- Sec. 501. Purposes.

Subtitle A—Consent Decrees and Non-Participating Manufacturers

- Sec. 511. Consent decrees.
- Sec. 512. National tobacco control protocol.
- Sec. 513. Non-participating manufacturers.

Subtitle B—State Enforcement

- Sec. 521. Requirement of no sale to minors law.
- Sec. 522. State reporting.
- Sec. 523. Reduction in State payments.

TITLE VI—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

- Sec. 601. General immunity.
- Sec. 602. Civil liability for past conduct.
- Sec. 603. Civil liability for future conduct.

Sec. 604. Non-participating manufacturers.

TITLE VII—PUBLIC DISCLOSURE OF HEALTH RESEARCH

Sec. 701. Purpose.

Sec. 702. National Tobacco Document Depository.

TITLE VIII—ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES

Sec. 801. Short title; table of contents.

Sec. 802. Definitions.

SUBTITLE A—TOBACCO COMMUNITY REVITALIZATION TRUST FUND

Sec. 811. Establishment of Trust Fund.

Sec. 812. Contributions by tobacco product manufacturers and importers.

SUBTITLE B—AGRICULTURAL MARKET TRANSITION ASSISTANCE

Sec. 821. Payments for lost tobacco quota.

Sec. 822. Industry payments for all Department costs associated with tobacco production.

Sec. 823. Tobacco community economic development grants.

Sec. 824. Modifications in Federal tobacco programs.

SUBTITLE C—FARMER AND WORKER TRANSITION ASSISTANCE

Sec. 831. Tobacco worker transition program.

Sec. 832. Farmer opportunity grants.

SUBTITLE D—IMMUNITY

Sec. 841. General immunity for tobacco producers and warehousemen.

TITLE IX—EFFECTIVE DATES AND OTHER PROVISIONS

Sec. 901. Effective dates.

Sec. 902. Native Americans.

Sec. 903. Preemption.

1 **SEC. 2. FINDINGS.**

2 (a) **GENERAL FINDINGS.**—Congress makes the fol-
3 lowing findings:

4 (1) The Food and Drug Administration and
5 other public health authorities view the use of to-
6 bacco products by the nation’s children as a “pedi-
7 atric disease” of epic and worsening proportions that

1 results in new generations of tobacco-dependent chil-
2 dren and adults.

3 (2) There is a consensus within the scientific
4 and medical communities that tobacco products are
5 inherently dangerous and cause cancer, heart dis-
6 ease, and other serious adverse health effects.

7 (3) The Food and Drug Administration and
8 other health authorities have concluded that virtually
9 all new users of tobacco products are under the age
10 of 18. Virtually all Federal, State, and local officials
11 and entities believe that tobacco advertising and
12 marketing contribute significantly to the use of nico-
13 tine-containing tobacco products by adolescents and
14 as such, sweeping new restriction on the sale, pro-
15 motion, and distribution of such products are need-
16 ed.

17 (4) Federal, State, and local governments lack
18 many of the legal means and resources needed to ad-
19 dress the societal problems caused by the use of to-
20 bacco products.

21 (5) Public health authorities believe that the so-
22 cietal benefits of enacting tobacco settlement legisla-
23 tion in human and economic terms would be vast.
24 The Food and Drug Administration found that re-
25 ducing underage tobacco use 50 percent “would pre-

1 vent well over 60,000 early deaths”. The Food and
2 Drug Administration has estimated that the mone-
3 tary value of the regulations promulgated as a result
4 of this Act will be worth up to \$43,000,000,000 per
5 year in reduced medical costs, improved productivity,
6 and the benefit of avoiding the premature death of
7 loved ones.

8 (6) The unique position occupied by tobacco in
9 the history and economy of the United States, the
10 magnitude of the actual and potential tobacco-relat-
11 ed litigation, the need to avoid the cost, expense, un-
12 certainty, and inconsistency associated with such
13 protracted litigation, the need to limit the sale, dis-
14 tribution, marketing, and advertising of tobacco
15 products to persons of legal age, and the need to
16 educate the public (especially young people) of the
17 health effects of using tobacco products all dictate
18 that it would be in the public interest to enact legis-
19 lation to facilitate a resolution of such matters.

20 (b) FINDINGS RELATED TO INTERSTATE COMMERCE
21 AND THE JUDICIAL SYSTEM.—Congress makes the follow-
22 ing findings:

23 (1) The sale, distribution, marketing, advertis-
24 ing, and use of tobacco products are activities sub-
25 stantially affecting interstate commerce. Such prod-

1 ucts are sold, marketed, advertised, and distributed
2 in interstate commerce on a nationwide basis and
3 have a substantial effect on the economy of the
4 United States.

5 (2) The sale, distribution, marketing, advertis-
6 ing, and use of tobacco products are activities that
7 substantially affect interstate commerce by virtue of
8 the health care and other costs that Federal and
9 State governmental authorities have incurred be-
10 cause of the usage of tobacco products.

11 (3) Various civil actions brought by State attor-
12 neys general, cities, counties, the Commonwealth of
13 Puerto Rico, third-party payors, and other private
14 classes and individuals to recover damages relating
15 to tobacco-related diseases, conditions and products
16 are pending throughout the United States, of these
17 actions are slow-moving, expensive, and burdensome
18 not only for the litigants but also for Federal and
19 State judicial systems.

20 **SEC. 3. PURPOSES.**

21 It is the purpose of this Act to—

22 (1) reiterate and enhance the authority of the
23 Food and Drug Administration to regulate tobacco
24 products and provide for tobacco industry funding of
25 the oversight activities of the Administration;

1 (2) ban all outdoor tobacco advertising and ban
2 all cartoon characters and human figures used in
3 connection with tobacco advertising;

4 (3) provide for the funding by the tobacco in-
5 dustry of an aggressive Federal enforcement pro-
6 gram relating to tobacco advertising and distribu-
7 tion, including a State-administered retail licensing
8 system to prevent minors from obtaining tobacco
9 products;

10 (4) subject the tobacco industry to severe finan-
11 cial penalties in the event that underage tobacco
12 usage does not decline radically over the next 10
13 years;

14 (5) provide for the establishment of national
15 standards to control the manufacturing of tobacco
16 products and the ingredients used in such products;

17 (6) provide certain regulatory powers to the
18 Food and Drug Administration to encourage the de-
19 velopment and marketing by the tobacco industry of
20 “less hazardous tobacco products”, including the
21 power to regulate the level of nicotine in such prod-
22 ucts;

23 (7) require the manufacturers of tobacco prod-
24 ucts to disclose all present and future non-public in-

1 ternal laboratory research regarding tobacco prod-
2 ucts;

3 (8) establish a minimum Federal standard to
4 limit smoking in public places;

5 (9) provide for the establishment of a National
6 Tobacco Settlement Trust Fund to be funded by the
7 tobacco industry and used in accordance with this
8 Act;

9 (10) provide for the establishment of a national
10 education-oriented counter advertising and tobacco
11 control campaign to be funded through the National
12 Tobacco Settlement Trust Fund;

13 (11) provide annual payments to States to fund
14 health benefits programs and to create a tobacco
15 products liability judgments and settlements fund to
16 be funded through the National Tobacco Settlement
17 Trust Fund; and

18 (12) provide for the establishment of a national
19 program of smoking cessation to be funded through
20 the National Tobacco Settlement Trust Fund.

21 **TITLE I—REGULATION OF THE**
22 **TOBACCO INDUSTRY**

23 **SEC. 100. DEFINITIONS.**

24 In this Act:

1 (1) BRAND.—The term “brand” means a vari-
2 ety of a tobacco product distinguished by the tobacco
3 used, tar content, nicotine content, flavoring used,
4 size, filtration, or packaging.

5 (2) CIGAR.—The term “cigar” means any roll
6 of tobacco wrapped in leaf tobacco or in any sub-
7 stance containing tobacco (other than any roll of to-
8 bacco which is a cigarette or cigarillo within the
9 meaning of paragraph (3) or (4)).

10 (3) CIGARETTE.—The term “cigarette” means
11 any product which contains nicotine, is intended to
12 be burned under ordinary conditions of use, and con-
13 sists of—

14 (A) any roll of tobacco wrapped in paper
15 or in any substance not containing tobacco; and

16 (B) any roll of tobacco wrapped in any
17 substance containing tobacco which, because of
18 its appearance, the type of tobacco used in the
19 filler, or its packaging and labeling, is likely to
20 be offered to, or purchased by, consumers as a
21 cigarette described in subparagraph (A).

22 (4) CIGARILLOS.—The term “cigarillos” means
23 any roll of tobacco wrapped in leaf tobacco or any
24 substance containing tobacco (other than any roll of
25 tobacco which is a cigarette within the meaning of

1 paragraph (3)) and as to which 1,000 units weigh
2 not more than 3 pounds.

3 (5) CIGARETTE TOBACCO.—The term “cigarette
4 tobacco” means any product that consists of loose
5 tobacco that contains or delivers nicotine and is in-
6 tended for use by persons in a cigarette. Unless oth-
7 erwise stated, the requirements of this Act pertain-
8 ing to cigarettes shall also apply to cigarette to-
9 bacco.

10 (6) COMMERCE.—The term “commerce”
11 means—

12 (A) commerce between any State, the Dis-
13 trict of Columbia, the Commonwealth of Puerto
14 Rico, Guam, the Virgin Islands, American
15 Samoa, the Northern Mariana Islands or any
16 territory or possession of the United States;

17 (B) commerce between points in any State,
18 the District of Columbia, the Commonwealth of
19 Puerto Rico, Guam, the Virgin Islands, Amer-
20 ican Samoa, the Northern Mariana Islands or
21 any territory or possession of the United States;
22 or

23 (C) commerce wholly within the District of
24 Columbia, Guam, the Virgin Islands, American

1 Samoa, the Northern Mariana Islands, or any
2 territory or possession of the United States.

3 (7) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner of Food and
5 Drugs.

6 (8) DISTRIBUTOR.—The term “distributor”
7 means any person who furthers the distribution of
8 tobacco products, whether domestic or imported, at
9 any point from the original place of manufacture to
10 the person who sells or distributes the product to in-
11 dividuals for personal consumption. Such term shall
12 not include common carriers.

13 (9) LITTLE CIGAR.—The term “little cigar”
14 means any roll of tobacco wrapped in leaf tobacco or
15 any substance containing tobacco (other than any
16 roll of tobacco which is a cigarette within the mean-
17 ing of subsection (1)) and as to which 1,000 units
18 weigh not more than 3 pounds.

19 (10) MANUFACTURER.—The term “manufac-
20 turer” means any person, including any repacker or
21 relabeler, who manufactures, fabricates, assembles,
22 processes, or labels a finished tobacco product.

23 (11) NICOTINE.—The term “nicotine” means
24 the chemical substance named 3-(1-Methyl-2-

1 pyrrolidiny) pyridine or $C_{10}H_{14}N_2$, including any
2 salt or complex of nicotine.

3 (12) PACKAGE.—The term “package” means a
4 pack, box, carton, or container of any kind in which
5 tobacco products are offered for sale, sold, or other-
6 wise distributed to consumers.

7 (13) PERSON.—The term “person” means an
8 individual, partnership, corporation, or any other
9 business or legal entity.

10 (14) PIPE TOBACCO.—The term “pipe tobacco”
11 means any loose tobacco that, because of its appear-
12 ance, type, packaging, or labeling, is likely to be of-
13 fered to, or purchased by, consumers as a tobacco
14 product to be smoked in a pipe.

15 (15) POINT OF SALE.—The term “point of
16 sale” means any location at which an individual can
17 purchase or otherwise obtain tobacco products for
18 personal consumption.

19 (16) RETAILER.—The term “retailer” means
20 any person who sells tobacco products to individuals
21 for personal consumption, or who operates a facility
22 where vending machines or self-service displays are
23 permitted under this title.

24 (17) SALE.—The term “sale” includes the sell-
25 ing, providing samples of, or otherwise making to-

1 bacco products available for personal consumption in
2 any place within the scope of this Act.

3 (18) SECRETARY.—The term “Secretary”
4 means the Secretary of Health and Human Services.

5 (19) SMOKELESS TOBACCO.—The term “smoke-
6 less tobacco” means any product that consists of
7 cut, ground, powdered, or leaf tobacco that contains
8 nicotine and that is intended to be placed in the oral
9 or nasal cavity.

10 (20) STATE.—The term “State” includes the
11 several States, the District of Columbia, the Com-
12 monwealth of Puerto Rico, Guam, the Virgin Is-
13 lands, American Samoa, the Northern Mariana Is-
14 lands, and any other territory or possession of the
15 United States. Such term includes any political divi-
16 sion of any State.

17 (21) TOBACCO.—The term “tobacco” means to-
18 bacco in its unmanufactured form.

19 (22) TOBACCO PRODUCT.—The term “tobacco
20 product” means cigars, cigarettes, cigarillos, ciga-
21 rette tobacco, little cigars, pipe tobacco, and smoke-
22 less tobacco.

23 (23) TRUST FUND.—The term “Trust Fund”
24 means the National Tobacco Settlement Trust Fund
25 established under section 401.

**Subtitle A—Restriction on
Marketing and Advertising**

SEC. 101. PROHIBITIONS ON ADVERTISING.

(a) PROHIBITION ON OUTDOOR ADVERTISING.—

(1) IN GENERAL.—No manufacturer, distributor, or retailer may use any form of outdoor tobacco product advertising, including billboards, posters, or placards.

(2) STADIA AND ARENAS.—Except as otherwise provided in this title, a manufacturer, distributor, or retailer shall not advertise tobacco products in any arena or stadium where athletic, musical, artistic, or other social or cultural events or activities occur.

(b) PROHIBITION ON USE OF HUMAN IMAGES AND CARTOONS.—No manufacturer, distributor, or retailer may use a human image or a cartoon character or cartoon-type character in its advertising, labeling, or promotional material with respect to a tobacco product.

(c) PROHIBITION ON ADVERTISING ON THE INTERNET.—No manufacturer, distributor, or retailer may use the Internet to advertise tobacco products unless such an advertisement is inaccessible in or from the United States.

(d) PROHIBITION ON POINT-OF-SALE ADVERTISING.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, no manufacturer, distribu-
3 tor, or retailer may use point-of-sale advertising of
4 tobacco products.

5 (2) ADULT-ONLY STORES AND TOBACCO OUT-
6 LETS.—Paragraph (1) shall not apply to point of
7 sale advertising at adult-only stores and tobacco out-
8 lets.

9 (3) PERMISSIBLE ADVERTISING.—

10 (A) IN GENERAL.—Each manufacturer of
11 tobacco products may display not more than 2
12 separate point-of-sale advertisements in or at
13 each location at which tobacco products are of-
14 fered for sale.

15 (B) MARKET SHARE MANUFACTURERS.—A
16 manufacturer with at least 25 percent of the
17 market share of the tobacco product involved
18 may display an additional point-of-sale adver-
19 tisement in or at each location at which tobacco
20 products are offered for sale.

21 (C) RETAILERS.—A retailer may have not
22 more than 1 point-of-sale advertisement relating
23 to the retailer's own or its wholesaler's con-
24 tracted retailer or private label brand of tobacco
25 product. No manufacturer or distributor may

1 enter into any arrangement with a retailer to
2 limit the ability of the retailer to display any
3 form of permissible point-of-sale advertisement
4 or promotional material originating with an-
5 other manufacturer or distributor.

6 (4) LIMITATIONS.—

7 (A) IN GENERAL.—A point of sale adver-
8 tisement permitted under this subsection shall
9 be comprised of a display area that is not larger
10 than 576 square inches (either individually or
11 in the aggregate) and shall consist only of black
12 letters on a white background or other recog-
13 nized typographical marks. Such advertisement
14 shall not be attached to nor located within 2
15 feet of any fixture on which candy is displayed
16 for sale.

17 (B) AUDIO AND VIDEO FORMATS.—Audio
18 and video advertisements permitted under sec-
19 tion 103(c) may be distributed to individuals
20 who are 18 years of age or older at point of sale
21 but may not be played or viewed at such point
22 of sale.

23 (C) DISPLAY FIXTURES.—Display fixtures
24 in the form of signs consisting of brand name

1 and price and not larger than 2 inches in height
2 are permitted.

3 (5) DEFINITION.—For purposes of this sub-
4 section, the term “point-of-sale advertising” means
5 all printed or graphical materials bearing the brand
6 name (alone or in conjunction with any other word),
7 logo, motto, selling message, recognizable color or
8 pattern of colors, or any other indicia of product
9 identification similar or identical to those used for
10 tobacco products which, when used for its intended
11 purpose, can reasonably be anticipated to be seen by
12 customers at a location at which tobacco products
13 are offered for sale.

14 **SEC. 102. GENERAL RESTRICTIONS.**

15 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
16 facturer shall not use a trade or brand name of a non-
17 tobacco product as the trade or brand name for a cigarette
18 or smokeless tobacco product, except for a tobacco product
19 whose trade or brand name was on both a tobacco product
20 and a nontobacco product that were sold in the United
21 States on or before January 1, 1995.

22 (b) ADVERTISING LIMITED TO FDA SPECIFIED
23 MEDIA.—

24 (1) IN GENERAL.—A manufacturer, distributor,
25 or retailer may, in accordance with this title, dis-

1 seminate or cause to be disseminated advertising or
2 labeling which bears a tobacco product brand name
3 (alone or in conjunction with any other word) or any
4 other indicia of tobacco product identification only in
5 newspapers, in magazines, in periodicals or other
6 publications (whether periodic or limited distribu-
7 tion), on billboards, posters and placards in accord-
8 ance with section 101(a), in nonpoint-of-sale pro-
9 motional material (including direct mail), in point-
10 of-sale promotional material, and in audio or video
11 formats delivered at a point-of-sale.

12 (2) LIMITATION.—A manufacturer, distributor,
13 or retailer that intends to disseminate, or to cause
14 to be disseminated, advertising or labeling for a to-
15 bacco product in a medium that is not described in
16 paragraph (1) shall notify the Commissioner not less
17 than 30 days prior to the date on which such me-
18 dium is to be used. Such notice shall describe the
19 medium and discuss the extent to which the adver-
20 tising or labeling may be seen by individuals who are
21 under 18 years of age.

22 (3) ACTION BY COMMISSIONER.—

23 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-
24 MENT MEDIA.—

1 (1) IN GENERAL.—No payment shall be made
2 by any manufacturer, distributor, or retailer for the
3 placement of any tobacco product or tobacco product
4 package or advertisement—

5 (A) as a prop in any television program or
6 motion picture produced for viewing by the gen-
7 eral public; or

8 (B) in a video or on a video game machine.

9 (2) VIDEO GAME.—The term “video game”
10 means any electronic amusement device that utilizes
11 a computer, microprocessor, or similar electronic cir-
12 cuitry and its own cathode ray tube, or is designed
13 to be used with a television set or a monitor, that
14 interacts with the user of the device.

15 (d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO
16 PRODUCTS.—No direct or indirect payment shall be made
17 by any manufacturer, distributor, or retailer to any entity
18 for the purpose of promoting the image or use of a tobacco
19 product through print or film media that appeals to indi-
20 viduals under 18 years of age or through a live perform-
21 ance by an entertainment artist that appeals to such indi-
22 viduals.

1 **SEC. 103. FORMAT AND CONTENT REQUIREMENTS FOR LA-**
 2 **BELING AND ADVERTISING.**

3 (a) IN GENERAL.—Except as provided in subsections
 4 (b) and (c), each manufacturer, distributor, and retailer
 5 advertising or causing to be advertised, disseminating or
 6 causing to be disseminated, any labeling or advertising for
 7 a tobacco product shall use only black text on a white
 8 background.

9 (b) CERTAIN ADVERTISING EXCEPTED.—

10 (1) IN GENERAL.—Subsection (a) shall not
 11 apply to advertising—

12 (A) in any facility where vending machines
 13 and self-service displays are permitted under
 14 this title if the advertising involved—

15 (i) is not visible from outside of the
 16 facility; and

17 (ii) is affixed to a wall or fixture in
 18 the facility;

19 (B) that appears in any publication
 20 (whether periodic, limited, or controlled dis-
 21 tribution) that the manufacturer, distributor, or
 22 retailer demonstrates is an adult publication.

23 (2) ADULT PUBLICATION.—For purposes of
 24 paragraph (1)(B), the term “adult publication”
 25 means a newspaper, magazine, periodical, or other
 26 publication—

1 (A) whose readers under 18 years of age
2 constitute 15 percent or less of the total reader-
3 ship as measured by competent and reliable
4 survey evidence; and

5 (B) that is read by fewer than 2,000,000
6 individuals who are under 18 years of age as
7 measured by competent and reliable survey evi-
8 dence.

9 (c) AUDIO OR VIDEO FORMATS.—Each manufac-
10 turer, distributor, and retailer advertising or causing to
11 be advertised any advertising for a tobacco product in an
12 audio or video format shall comply with the following:

13 (1) With respect to an audio format, the adver-
14 tising shall be limited to words only with no music
15 or sound effects.

16 (2) With respect to a video format, the advertis-
17 ing shall be limited to static black text only on a
18 white background. Any audio with the video adver-
19 tising shall be limited to words only with no music
20 or sound effects.

21 **SEC. 104. STATEMENT OF INTENDED USE.**

22 (a) REQUIREMENT.—Each manufacturer, distribu-
23 tor, and retailer advertising or causing to be advertised,
24 disseminating or causing to be disseminated, advertising
25 concerning cigarettes, cigarette tobacco, or smokeless to-

1 bacco products otherwise permitted under this title shall
 2 include, as provided in section 502 of the Federal Food,
 3 Drug, and Cosmetic Act (21 U.S.C. 352), the established
 4 name of the product and a statement of the intended use
 5 of the product as provided for in subsection (b).

6 (b) USE STATEMENTS.—

7 (1) CIGARETTES.—A statement of intended use
 8 for cigarettes or cigarette tobacco is as follows
 9 (whichever is appropriate):

10 Cigarettes—A Nicotine-Delivery Device for Per-
 11 sons 18 or Older.

12 Cigarette Tobacco—A Nicotine-Delivery Device
 13 for Persons 18 or Older.

14 (2) SMOKELESS TOBACCO.—A statement of in-
 15 tended use for a smokeless tobacco product is as fol-
 16 lows (whichever is appropriate):

17 Loose Leaf Chewing Tobacco—A Nicotine-De-
 18 livery Device for Persons 18 or Older.

19 Plug Chewing Tobacco—A Nicotine-Delivery
 20 Device for Persons 18 or Older.

21 Twist Chewing Tobacco—A Nicotine-Delivery
 22 Device for Persons 18 or Older.

23 Moist Snuff—A Nicotine-Delivery Device for
 24 Persons 18 or Older.

1 Dry Snuff—A Nicotine-Delivery Device for Per-
2 sons 18 or Older.

3 (c) TYPE AND LOCATION.—Requirements with re-
4 spect to type size, style, font, and location shall be deter-
5 mined by the Commissioner.

6 **SEC. 105. BAN ON NONTOBACCO ITEMS AND SERVICES,**
7 **CONTESTS AND GAMES OF CHANCE, AND**
8 **SPONSORSHIP OF EVENTS.**

9 (a) BAN ON ALL NONTOBACCO MERCHANDISE.—No
10 manufacturer, importer, distributor, or retailer shall mar-
11 ket, license, distribute, sell, or cause to be marketed, li-
12 censed, distributed or sold any item (other than tobacco
13 products) or service which bears the brand name (alone
14 or in conjunction with any other word), logo, symbol,
15 motto, selling message, recognizable color or pattern of
16 colors, or any other indicia of product identification simi-
17 lar or identifiable to those used for any brand of tobacco
18 products.

19 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
20 facturer, distributor, or retailer shall offer or cause to be
21 offered to any person purchasing tobacco products any gift
22 or item (other than a tobacco product) in consideration
23 of the purchase of such products, or to any person in con-
24 sideration of furnishing evidence, such as credits, proofs-
25 of-purchase, or coupons, of such a purchase.

1 (c) SPONSORSHIP.—

2 (1) IN GENERAL.—No manufacturer, distribu-
3 tor, or retailer shall sponsor or cause to be spon-
4 sored any athletic, musical, artistic, or other social
5 or cultural event, or any entry or team in any event,
6 in which the brand name (alone or in conjunction
7 with any other word), logo, motto, selling message,
8 recognizable color or pattern of colors, or any other
9 indicia of product identification similar or identical
10 to those used for tobacco products is used.

11 (2) USE OF CORPORATE NAME.—A manufac-
12 turer, distributor, or retailer may sponsor or cause
13 to be sponsored any athletic, musical, artistic, or
14 other social or cultural event in the name of the cor-
15 poration which manufactures the tobacco product
16 if—

17 (A) both the corporate name and the cor-
18 poration were registered and in use in the Unit-
19 ed States prior to January 1, 1995; and

20 (B) the corporate name does not include
21 any brand name (alone or in conjunction with
22 any other word), logo, symbol, motto, selling
23 message, recognizable color or pattern of colors,
24 or any other indicia or product identification

1 identical or similar to, or identifiable with,
 2 those used for any brand of tobacco products.

3 **SEC. 106. USE OF PRODUCT DESCRIPTORS.**

4 (a) IN GENERAL.—With respect to a tobacco product,
 5 the label of which bears a product description (such as
 6 “light” or “low tar”), such label shall also contain, and
 7 any advertisement concerning such product shall contain,
 8 a mandatory disclaimer, to be established by the Sec-
 9 retary, that states that such product has not been shown
 10 to be less hazardous than another product of that type.

11 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 12 tion shall be construed to limit the authority of the Food
 13 and Drug Administration with respect to words used as
 14 product descriptors.

15 **Subtitle B—Warnings, Labeling**
 16 **and Packaging**

17 **SEC. 111. CIGARETTE WARNINGS.**

18 (a) IN GENERAL.—

19 (1) PACKAGING.—It shall be unlawful for any
 20 person to manufacture, package, or import for sale
 21 or distribution within the United States any ciga-
 22 rettes the package of which fails to bear, in accord-
 23 ance with the requirements of this section, one of
 24 the following labels:

25 WARNING: Cigarettes Are Addictive.

1 WARNING: Tobacco Smoke Can Harm Your
2 Children.

3 WARNING: Cigarettes Cause Fatal Lung Dis-
4 ease.

5 WARNING: Cigarettes Cause Cancer.

6 WARNING: Cigarettes Cause Strokes And
7 Heart Disease.

8 WARNING: Smoking During Pregnancy Can
9 Harm Your Baby.

10 WARNING: Smoking Can Kill You.

11 WARNING: Tobacco Smoke Causes Fatal
12 Lung Disease In Nonsmokers.

13 WARNING: Quitting Smoking Now Greatly
14 Reduces Serious Risks To Your Health.

15 (2) ADVERTISING.—It shall be unlawful for any
16 manufacturer or importer of cigarettes to advertise
17 or cause to be advertised within the United States
18 any cigarette unless the advertising bears, in accord-
19 ance with the requirements of this section, one of
20 the following labels:

21 WARNING: Cigarettes Are Addictive.

22 WARNING: Tobacco Smoke Can Harm Your
23 Children.

24 WARNING: Cigarettes Cause Fatal Lung Dis-
25 ease.

1 WARNING: Cigarettes Cause Cancer.

2 WARNING: Cigarettes Cause Strokes And
3 Heart Disease.

4 WARNING: Smoking During Pregnancy Can
5 Harm Your Baby.

6 WARNING: Smoking Can Kill You.

7 WARNING: Tobacco Smoke Causes Fatal
8 Lung Disease In Nonsmokers.

9 WARNING: Quitting Smoking Now Greatly
10 Reduces Serious Risks To Your Health.

11 (b) REQUIREMENTS FOR LABELING.—

12 (1) LOCATION.—Each label statement required
13 by paragraph (1) of subsection (a) shall be located
14 on the upper portion of the front panel of the ciga-
15 rette package (or carton) and occupy not less than
16 25 percent of such front panel.

17 (2) TYPE AND COLOR.—With respect to each
18 label statement required by paragraph (1) of sub-
19 section (a), the phrase “WARNING” shall appear in
20 capital letters and the label statement shall be print-
21 ed in 17 point type with adjustments as determined
22 appropriate by the Commissioner to reflect the
23 length of the required statement. All the letters in
24 the label shall appear in conspicuous and legible
25 type, in contrast by typography, layout, or color with

1 all other printed material on the package, and be
2 printed in an alternating black-on-white and white-
3 on-black format as determined appropriate by the
4 Commissioner.

5 (3) EXCEPTION.—The provisions of paragraph
6 (1) shall not apply in the case of a flip-top cigarette
7 package (offered for sale on the date of enactment
8 of this Act) where the front portion of the flip-top
9 does not comprise at least 25 percent of the front
10 panel. In the case of such a package, the label state-
11 ment required by paragraph (1) of subsection (a)
12 shall occupy the entire front portion of the flip top.

13 (c) REQUIREMENTS FOR ADVERTISING.—

14 (1) LOCATION.—Each label statement required
15 by paragraph (2) of subsection (a) shall occupy not
16 less than 20 percent of the area of the advertisement
17 involved.

18 (2) TYPE AND COLOR.—

19 (A) TYPE.—With respect to each label
20 statement required by paragraph (2) of sub-
21 section (a), the phrase “WARNING” shall ap-
22 pear in capital letters and the label statement
23 shall be printed in the following types:

1 (i) With respect to whole page adver-
 2 tisements on broadsheet newspaper—45
 3 point type.

4 (ii) With respect to half page adver-
 5 tisements on broadsheet newspaper—39
 6 point type.

7 (iii) With respect to whole page adver-
 8 tisements on tabloid newspaper—39 point
 9 type.

10 (iv) With respect to half page adver-
 11 tisements on tabloid newspaper—27 point
 12 type.

13 (v) With respect to DPS magazine ad-
 14 vertisements—31.5 point type.

15 (vi) With respect to whole page maga-
 16 zine advertisements—31.5 point type.

17 (vii) With respect to 28cm x 3 column
 18 advertisements—22.5 point type.

19 (viii) With respect to 20cm x 2 col-
 20 umn advertisements—15 point type.

21 The Commissioner may revise the required type
 22 sizes as the Commissioner determines appro-
 23 priate within the 20 percent requirement.

24 (B) COLOR.—All the letters in the label
 25 under this paragraph shall appear in conspicu-

ous and legible type, in contrast by typography, layout, or color with all other printed material on the package, and be printed in an alternating black-on-white and white-on-black format as determined appropriate by the Commissioner.

(d) ROTATION OF LABEL STATEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the label statements specified in paragraphs (1) and (2) of subsection (a) shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1) and (2) will be displayed by the manufacturer or importer at the same time.

(2) APPLICATION OF OTHER ROTATION REQUIREMENTS.—

(A) IN GENERAL.—A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than $\frac{1}{4}$ of 1 percent of all the cigarettes sold in the United States in such year; and

(ii) more than $\frac{1}{2}$ of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the 1-year period beginning on the date of the application approval.

(B) PLAN.—An applicant under subparagraph (A) shall include in its application a plan

under which the label statements specified in paragraph (1) of subsection (a) will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).

(C) OTHER ROTATION REQUIREMENTS.—

Under the label rotation which the manufacturer or importer with an approved application may put into effect, each of the labels specified in paragraph (1) of subsection (a) shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the 12-month period beginning on the date of the approval by the Commission of the application.

(e) APPLICATION OF REQUIREMENT.—Subsection (a)

does not apply to a distributor, a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(f) TELEVISION AND RADIO ADVERTISING.—It shall

be unlawful to advertise cigarettes and little cigars on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

SEC. 112. SMOKELESS TOBACCO WARNINGS.

(a) IN GENERAL.—

1 (1) PACKAGING.—It shall be unlawful for any
2 person to manufacture, package, or import for sale
3 or distribution within the United States any smoke-
4 less tobacco product the package of which fails to
5 bear, in accordance with the requirements of this
6 section, one of the following labels:

7 WARNING: This Product May Cause Mouth
8 Cancer.

9 WARNING: This Product May Cause Gum
10 Disease And Tooth Loss.

11 WARNING: This Product Is Not A Safe Alter-
12 native To Cigarettes.

13 WARNING: Smokeless Tobacco Is Addictive.

14 (2) ADVERTISING.—It shall be unlawful for any
15 manufacturer or importer of smokeless tobacco prod-
16 ucts to advertise or cause to be advertised within the
17 United States any smokeless tobacco product unless
18 the advertising bears, in accordance with the re-
19 quirements of this section, one of the following la-
20 bels:

21 WARNING: This Product May Cause Mouth
22 Cancer.

23 WARNING: This Product May Cause Gum
24 Disease And Tooth Loss.

1 WARNING: This Product Is Not A Safe Alter-
2 native To Cigarettes.

3 WARNING: Smokeless Tobacco Is Addictive.

4 (b) REQUIREMENTS FOR LABELING.—

5 (1) LOCATION.—Each label statement required
6 by paragraph (1) of subsection (a) shall be located
7 on the principal display panel of the product and oc-
8 cupy not less than 25 percent of such panel.

9 (2) TYPE AND COLOR.—With respect to each
10 label statement required by paragraph (1) of sub-
11 section (a), the phrase “WARNING” shall appear in
12 capital letters and the label statement shall be print-
13 ed in 17 point type with adjustments as determined
14 appropriate by the Commissioner to reflect the
15 length of the required statement. All the letters in
16 the label shall appear in conspicuous and legible type
17 in contrast by typography, layout, or color with all
18 other printed material on the package and be print-
19 ed in an alternating black on white and white on
20 black format as determined appropriate by the Com-
21 missioner.

22 (c) ADVERTISING AND ROTATION.—The provisions of
23 subsections (c) and (d)(1) of section 111 shall apply to
24 advertisements for smokeless tobacco products and the ro-

1 tation of the label statements required under subsection
2 (a)(1) on such products.

3 (d) APPLICATION OF REQUIREMENT.—Subsection (a)
4 does not apply to a distributor or a retailer of smokeless
5 tobacco products who does not manufacture, package, or
6 import such products for sale or distribution within the
7 United States.

8 (e) TELEVISION AND RADIO ADVERTISING.—It shall
9 be unlawful to advertise smokeless tobacco on any medium
10 of electronic communications subject to the jurisdiction of
11 the Federal Communications Commission.

12 **SEC. 113. INGREDIENTS.**

13 Each person who manufactures, packages, or imports
14 cigarettes or smokeless tobacco products shall annually
15 provide the Secretary with the information required under
16 section 910 of the Federal Food, Drug, and Cosmetic Act
17 (as added by section 143(3) of this Act).

18 **SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRUC-**
19 **TION.**

20 (a) ENFORCEMENT.—

21 (1) IN GENERAL.—A violation of section 111 or
22 112 or the regulations promulgated pursuant to this
23 subtitle shall be considered a violation of section 5
24 of the Federal Trade Commission Act.

1 (2) FINES.—Any person who is found to violate
2 any provision of sections 111, 112, or 113(a) shall
3 be guilty of a misdemeanor and shall, on conviction
4 thereof, be subject to a fine of not more than
5 \$10,000.

6 (b) INJUNCTIONS.—The several district courts of the
7 United States are vested with jurisdiction, for cause
8 shown, to prevent and restrain violations of this subtitle
9 upon the application of the Federal Trade Commission in
10 the case of a violation of section 111 or 112 or upon appli-
11 cation of the Attorney General of the United States acting
12 through the several United States attorneys in their sev-
13 eral districts in the case of a violation of section 113.

14 (c) REGULATIONS.—Not later than 180 days after
15 the date of the enactment of this Act, the Federal Trade
16 Commission shall promulgate such regulations as it may
17 require to implement sections 111 and 112.

18 (d) CONSTRUCTION.—Nothing in this subtitle (other
19 than the requirements of sections 111, 112, and 113) shall
20 be construed to limit, restrict, or expand the authority of
21 the Federal Trade Commission with respect to unfair or
22 deceptive acts or practices in the advertising of cigarettes
23 or smokeless tobacco products.

1 **SEC. 115. PREEMPTION.**

2 (a) FEDERAL ACTION.—No statement relating to the
3 use of cigarettes or smokeless tobacco products and
4 health, other than the statements required by sections 111
5 or 112, shall be required by any Federal agency to appear
6 on any package or in any advertisement of cigarettes or
7 a smokeless tobacco product.

8 (b) STATE AND LOCAL ACTION.—No statement relat-
9 ing to the use of cigarettes or smokeless tobacco products
10 and health, other than the statements required by sections
11 111 and 112, shall be required by any State or local stat-
12 ute or regulation to be included on any package or in any
13 advertisement of cigarettes or a smokeless tobacco prod-
14 uct.

15 (c) EFFECT ON LIABILITY LAW.—Except as other-
16 wise provided in this Act, nothing in this subtitle shall re-
17 lieve any person from liability at common law or under
18 State statutory law to any other person.

19 **SEC. 116. REPORTS.**

20 (a) SECRETARY'S REPORT.—Not later than 6 months
21 after the date of enactment of this Act, and biennially
22 thereafter, the Secretary shall prepare and submit to Con-
23 gress a report containing—

24 (1) a description of the effects of health edu-
25 cation efforts on the use of cigarettes and smokeless
26 tobacco products;

1 (2) a description of the use by the public of
2 cigarettes and smokeless tobacco products;

3 (3) an evaluation of the health effects of ciga-
4 rettes and smokeless tobacco products and the iden-
5 tification of areas appropriate for further research;
6 and

7 (4) such recommendations for legislation and
8 administrative action as the Secretary considers ap-
9 propriate.

10 (b) FTC REPORT.—Not later than 6 months after
11 the date of enactment of this Act, and biennially there-
12 after, the Federal Trade Commission shall prepare and
13 submit to Congress a report containing—

14 (1) a description of the current sales, advertis-
15 ing, and marketing practices associated with ciga-
16 rettes and smokeless tobacco products; and

17 (2) such recommendations for legislation and
18 administrative action as the Commission deems ap-
19 propriate.

20 **SEC. 117. EXPORTS.**

21 Packages of cigarettes or smokeless tobacco products
22 manufactured, imported, or packaged—

23 (1) for export from the United States; or

1 (2) for delivery to a vessel or aircraft, as sup-
 2 plies, for consumption beyond the jurisdiction of the
 3 internal revenue laws of the United States;
 4 shall be exempt from the requirements of this subtitle, but
 5 such exemptions shall not apply to cigarettes or smokeless
 6 tobacco products manufactured, imported, or packaged for
 7 sale or distribution to members or units of the Armed
 8 Forces of the United States located outside of the United
 9 States.

10 **SEC. 118. REPEALS.**

11 The following Acts are repealed:

12 (1) The Federal Cigarette Labeling and Adver-
 13 tising Act (15 U.S.C. 1331 et seq.).

14 (2) The Comprehensive Smokeless Tobacco
 15 Health Education Act of 1986 (15 U.S.C. 4401 et
 16 seq.).

17 **Subtitle C—Restriction on Access**
 18 **to Tobacco Products**

19 **SEC. 121. REQUIREMENTS RELATING TO RETAILERS.**

20 (a) SALES TO MINORS PROHIBITED.—No retailer
 21 may distribute a tobacco product to any individual who
 22 is under 18 years of age.

23 (b) PHOTO IDENTIFICATION.—

24 (1) REQUIREMENT.—Except as provided in
 25 paragraph (2), each retailer shall verify, by means of

1 photographic identification containing the date of
2 birth of the bearer, that no individual purchasing a
3 tobacco product is under 18 years of age.

4 (2) EXCEPTION.—No verification under para-
5 graph (1) is required for any individual who is at
6 least 27 years of age.

7 (3) LOCATION OF PRODUCTS.—Except as pro-
8 vided in section 122(d), a retailer shall ensure that
9 all tobacco products are located in areas where cus-
10 tomers do not have access to the products.

11 (c) FACE-TO-FACE TRANSACTIONS.—Except as pro-
12 vided in section 122(c)(1), a retailer may sell tobacco
13 products only in a direct, face-to-face exchange without
14 the assistance of any electronic or mechanical device.

15 (d) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
16 may break or otherwise open a tobacco product to sell or
17 distribute to individuals portions of such product (includ-
18 ing individual cigarettes or a number of cigarettes that
19 is smaller than the quantity in the minimum package size,
20 or any quantity of cigarette tobacco or smokeless tobacco
21 that is smaller than the smallest package distributed by
22 the retailer for individual consumer use).

23 (e) RETAILER COMPLIANCE WITH RESPECT TO
24 SELF-SERVICE.—Each retailer shall ensure that all to-
25 bacco-related self-service displays, advertising, labeling,

1 and other items that are located in the establishment of
2 the retailer and that do not comply with the requirements
3 of this title are removed or are brought into compliance
4 with the requirements of this title.

5 **SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.**

6 (a) MINIMUM CIGARETTE PACKAGE SIZE.—Except
7 as otherwise provided in this section, no manufacturer,
8 distributor, or retailer may sell or cause to be sold, or dis-
9 tribute or cause to be distributed, any cigarette package
10 that contains fewer than 20 cigarettes.

11 (b) PROHIBITION ON SAMPLING.—No manufacturer,
12 distributor, or retailer may distribute or cause to be dis-
13 tributed any free samples of any tobacco product.

14 (c) PROHIBITION ON DISTRIBUTION THROUGH SELF-
15 SERVICE MODES OF SALE.—

16 (1) VENDING MACHINES.—No manufacturer,
17 distributor, or retailer may distribute or cause to be
18 distributed any tobacco product through a vending
19 machine.

20 (2) OTHER DISPLAYS.—Except as provided in
21 subsection (d)(1)(B), no manufacturer, distributor,
22 or retailer may distribute or cause to be distributed
23 any tobacco product through a self-service display.

24 (d) PERMITTED SELF-SERVICE MODES OF SALE.—

1 (1) IN GENERAL.—Notwithstanding this sub-
2 title, the following methods of distributing tobacco
3 products are permitted:

4 (A) Mail-order sales as provided for in
5 paragraph (2), except that mail-order redemp-
6 tion of coupons and the distribution of free
7 samples through the mail shall be prohibited.

8 (B) Self-service displays that are located in
9 facilities where the retailer ensures that no indi-
10 viduals under 18 years of age are present or
11 permitted to enter at any time.

12 (2) MAIL-ORDER SALES.—

13 (A) IN GENERAL.—A manufacturer, dis-
14 tributor, or retailer may distribute or cause to
15 be distributed a tobacco product through mail-
16 order sales only if such sales are subject to a
17 procedure for verifying that no individual pur-
18 chasing such products is under 18 years of age.

19 (B) REVIEW BY COMMISSIONER.—Not
20 later than 2 years after the date of enactment
21 of this Act, the Commissioner shall review the
22 verification procedures implemented under sub-
23 paragraph (A) to determine whether individuals
24 under 18 years of age are obtaining tobacco
25 products through the mail. If the Commissioner

1 determines that a significant number of under-
2 age individuals are obtaining such products
3 through the mail, the Commissioner may pro-
4 mulgate regulations to ban the distribution of
5 tobacco products through the mail.

6 **Subtitle D—Licensing of Retail**
7 **Tobacco Sellers**

8 **SEC. 131. ESTABLISHMENT OF PROGRAM.**

9 (a) IN GENERAL.—The Commissioner, after con-
10 sultation with the Secretary, shall establish a program
11 under which an entity would be required to obtain a State
12 or local license to sell or otherwise distribute tobacco prod-
13 ucts directly to consumers.

14 (b) PROHIBITION ON DISTRIBUTION.—No entity
15 shall sell or otherwise distribute tobacco products directly
16 to consumers unless such entity has in effect a tobacco
17 license issued or renewed in accordance with the laws of
18 the State in which the products are to be sold or otherwise
19 distributed.

20 (c) ELIGIBILITY OF STATE FOR PAYMENTS.—To be
21 eligible to receive a block grant under section 502, a State
22 shall have in effect laws that meet the standards described
23 in this subtitle that provide for the licensing of entities
24 engaged in the sale or distribution of tobacco products di-

1 rectly to consumers and shall enforce such laws in accord-
2 ance with section 133.

3 **SEC. 132. REQUIREMENTS.**

4 (a) LICENSURE AND NOTICE.—

5 (1) IN GENERAL.—The State shall require that
6 each person engaged in the sale or distribution of to-
7 bacco products directly to consumers obtain a license
8 that is issued by the State. A separate license shall
9 be required for each place of business where tobacco
10 products are distributed or sold at retail.

11 (2) NOTICE.—The State shall notify every per-
12 son in the State who is engaged in the distribution
13 at retail of tobacco products of the license require-
14 ment of this section and of the date by which such
15 person shall have obtained a license in order to dis-
16 tribute such products.

17 (b) FEE.—The State may assess an annual licensing
18 fee with respect to each entity that desires to obtain a
19 license under subsection (a). Amounts derived from such
20 fees shall be used to offset the administrative costs in-
21 curred by the State in issuing and renewing licenses under
22 this subtitle.

23 (c) APPLICATION.—

24 (1) IN GENERAL.—An entity shall prepare and
25 submit to the State an application for a license (in-

cluding the renewal of a license) under this section, on such form as the State may require, that shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as “notice address”), and any other identifying information that the State may require.

(2) ACTION BY STATE.—

(A) IN GENERAL.—The State shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the licensing fee. The State shall provide notice to an applicant of an action on an application denying the issuance of a license or refusing to renew a license.

(B) FINDING BY STATE.—The State shall deny the issuance or renewal of a license upon an application if the State determines that the applicant has failed to comply with the requirements of this title.

(3) SCOPE AND RENEWAL.—Every license issued by the State shall be valid for a period deter-

1 mined by the State and shall be renewed upon appli-
2 cation except as otherwise provided in this section.

3 **SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.**

4 (a) PENALTIES.—

5 (1) CRIMINAL PENALTIES APPLICABLE TO UN-
6 LICENSED SELLERS.—Any individual who sells or
7 otherwise distributes tobacco products to a consumer
8 without a tobacco license in effect as provided for in
9 this subtitle shall be subject, under the applicable
10 State law, to a fine of not less than \$1,000, or im-
11 prisonment of not less than 6 months, or both. With
12 respect to any corporate employer of such an indi-
13 vidual, the corporation shall be subject to a fine of
14 not more than \$50,000.

15 (2) CIVIL PENALTIES APPLICABLE TO SELLERS
16 IN VIOLATION OF LICENSE.—

17 (A) IN GENERAL.—In addition to any
18 criminal penalties that may be imposed under
19 paragraph (1), a State may, in accordance with
20 subsection (b), impose civil penalties on any en-
21 tity that has sold or distributed tobacco prod-
22 ucts in the State in violation of the State to-
23 bacco licensing laws.

1 (B) LIMITATIONS.—The civil penalties that
2 may be imposed under subparagraph (A) shall
3 not exceed the following:

4 (i) For the first offense within any 2-
5 year period, \$500, or a 3-day suspension of
6 the tobacco license, or both.

7 (ii) For a second offense within any 2-
8 year period, \$1,000, or a 7-day suspension
9 of the tobacco license, or both.

10 (iii) For a third offense within any 2-
11 year period, \$2,000, or a 30-day suspen-
12 sion of the tobacco license, or both.

13 (iv) For a fourth offense within any 2-
14 year period, \$5,000, or a 6-month suspen-
15 sion of the tobacco license, or both.

16 (v) For a fifth offense within any 2-
17 year period, \$10,000, or a 1-year suspen-
18 sion of the tobacco license, or both.

19 (vi) For a sixth and any subsequent
20 offense within any 2-year period, \$25,000,
21 or a 3-year revocation of the tobacco li-
22 cense.

23 (vii) For a tenth offense within any 2-
24 year period, the permanent revocation of
25 the tobacco license.

1 (b) REVOCATION AND SUSPENSIONS.—

2 (1) NOTICE.—Upon a finding that a tobacco li-
3 censee has been determined by a court of competent
4 jurisdiction to have violated a provision of State law
5 under this subtitle during the license term, the State
6 shall notify the licensee in writing, served personally
7 or by registered mail at the principal place of busi-
8 ness of the licensee, that any subsequent violation of
9 such law at the same place of business may result
10 in an administrative action to suspend the license
11 for a period determined by the State in accordance
12 with subsection (a)(2)(B).

13 (2) SUSPENSION.—Upon finding that a further
14 violation by the tobacco licensee has occurred involv-
15 ing the same place of business for which the license
16 was issued and the licensee has been provided notice
17 under paragraph (1), the State may initiate an ad-
18 ministrative action to suspend the license for a pe-
19 riod to be determined in accordance with subsection
20 (a)(2)(B). If an administrative action to suspend a
21 license is initiated, the State shall immediately notify
22 the licensee, in writing at the principal place of busi-
23 ness of the licensee, of the initiation of the action
24 and the reasons therefore and permit the licensee an
25 opportunity, at least 30 days after written notice is

1 served personally or by registered mail upon the li-
2 censee, to show why suspension of the license would
3 be unwarranted or unjust.

4 (3) REVOCATION.—The State may initiate an
5 administrative action to revoke a tobacco license that
6 previously has been suspended under paragraph (2)
7 if, during the 2-year period described in subsection
8 (a)(2)(B), a further violation of this subtitle is com-
9 mitted after the suspension by the licensee involving
10 the same place of business for which the license was
11 issued. If an administrative action to revoke a li-
12 cense is initiated, the State shall immediately notify
13 the licensee, in writing at the principal place of busi-
14 ness of the licensee, of the initiation of the action
15 and the reasons therefore and permit the licensee an
16 opportunity, at least 30 days after written notice is
17 served personally or by registered mail upon the li-
18 censee, to show why revocation of the license would
19 be unwarranted or unjust.

20 (c) JUDICIAL REVIEW.—A tobacco licensee may seek
21 judicial review of an action of the State suspending, revok-
22 ing, denying, or refusing to renew a license under this sec-
23 tion by filing a complaint in a court of competent jurisdic-
24 tion. A complaint shall be filed within 30 days after the

1 date on which notice of the action involved is received by
 2 the licensee. The court shall review the evidence de novo.

3 **SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER**
 4 **ENTITIES.**

5 (a) IN GENERAL.—The Commissioner, in consulta-
 6 tion with the Secretary of Defense, Secretary of State, and
 7 other appropriate Federal officials, shall establish and im-
 8 plement a Federal tobacco licensing program to be applied
 9 to entities that sell or distribute tobacco products—

10 (1) on any military installation (as defined in
 11 section 2801(c)(2) of title X, United States Code);

12 (2) in any United States embassy;

13 (3) in any facility owned and operated by the
 14 Federal Government either in the United States or
 15 in a foreign country;

16 (4) in any duty-free shop located within the
 17 United States; or

18 (5) through any other Federal entity or on any
 19 other Federal property as determined appropriate by
 20 the Commissioner.

21 (b) REQUIREMENTS OF PROGRAM.—The program es-
 22 tablished under subsection (a) shall apply requirements
 23 (including those for penalties, suspensions, and revoca-
 24 tions) similar to those required to be implemented by
 25 States under this subtitle.

(c) INDIAN TRIBES AND TRIBAL LANDS.—For purposes of applying and enforcing the provisions of this subtitle to entities that sell or otherwise distribute tobacco products on Indian reservations (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b)) shall be treated as a State.

Subtitle E—Regulation of Tobacco Product Development and Manufacturing

SEC. 141. REFERENCE.

Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.

(a) DEFINITIONS.—

(1) DRUG.—

(A) IN GENERAL.—Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by inserting be-

1 fore the first period “; and (E) tobacco prod-
 2 ucts”.

3 (B) EXCEPTION.—Section 201(p) of such
 4 Act is amended in paragraphs (1) and (2) by
 5 striking “(except a new animal drug” and in-
 6 serting “(except a tobacco product, a new ani-
 7 mal drug,”.

8 (2) DEVICES.—Section 201(h) (21 U.S.C.
 9 321(h)) is amended by adding at the end the follow-
 10 ing: “Such term includes a tobacco product which
 11 shall be classified as a class II device.”.

12 (3) OTHER DEFINITIONS.—Section 201 (21
 13 U.S.C. 321) is amended by adding at the end there-
 14 of the following new paragraphs:

15 “(ii) TOBACCO ADDITIVE.—The term ‘tobacco addi-
 16 tive’ means any substance the intended use of which re-
 17 sults or may reasonably be expected to result, directly or
 18 indirectly, in the substance becoming a component of, or
 19 otherwise affecting the characteristics of, any tobacco
 20 product, including any substance that may have been re-
 21 moved from the tobacco product and then readded in the
 22 substance’s original or modified form.

23 “(jj) TAR.—The term ‘tar’ means mainstream total
 24 articulate matter minus nicotine and water.

1 “(kk) TOBACCO PRODUCT.—The term ‘tobacco prod-
 2 uct’ has the meaning given such term in section 100(22)
 3 of the Universal Tobacco Settlement Act.”.

4 (b) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is
 5 amended by adding at the end thereof the following new
 6 subsection:

7 “(x) The manufacture, labeling, distribution, and sale
 8 of any adulterated or misbranded tobacco product in viola-
 9 tion of—

10 “(1) regulations issued pursuant to section 903;

11 “(2) title I of the Universal Tobacco Settlement
 12 Act.”.

13 (c) ADULTERATED OR MISBRANDED PROVISIONS.—

14 (1) ADULTERATION.—Section 501 (21 U.S.C.
 15 351) is amended by adding at the end the following:

16 “(j) If it is a tobacco product and it does not comply
 17 with the provisions of chapter IX.”.

18 (2) MISBRANDING.—Section 502 (21 U.S.C.
 19 352) is amended by adding at the end the following:

20 “(u) If it is a tobacco product and its labeling does
 21 not comply with the provisions of chapter IX and the pro-
 22 visions of title I of the Universal Tobacco Settlement
 23 Act.”.

24 (d) CLASSIFICATION OF TOBACCO PRODUCTS.—Sec-
 25 tion 512(a)(1)(B) (21 U.S.C. 360e(a)(1)(B)) is amended

1 by adding at the end the following: “For purposes of this
 2 Act, a tobacco product shall be classified as a class II de-
 3 vice with performance standards applicable under chapter
 4 IX.”.

5 **SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO**
 6 **PRODUCTS.**

7 The Act (21 U.S.C. 301 et seq.) is amended—

8 (1) by redesignating chapter IX as chapter X;

9 (2) by redesignating sections 901, 902, 903,
 10 904, and 905 as sections 1001, 1002, 1003, 1004,
 11 and 1005, respectively; and

12 (3) by adding after chapter VIII the following
 13 new chapter:

14 “CHAPTER IX—TOBACCO PRODUCTS

15 “**SEC. 901. DEFINITIONS.**

16 “For purposes of this chapter and in addition to the
 17 definitions contained in section 201, the definitions under
 18 section 100 of the Universal Tobacco Settlement Act shall
 19 apply.

20 “**SEC. 902. PURPOSE.**

21 “It is the purpose of this chapter to impose a regu-
 22 latory scheme applicable to the development and manufac-
 23 turing of cigarettes and smokeless tobacco products/to-
 24 bacco products. Such scheme shall include the approval
 25 of the ingredients used in such products and the imposi-

1 tion of standards to reduce the level of certain constituents
2 contained in such products, including nicotine.

3 **“SEC. 903. PROMULGATION OF REGULATIONS.**

4 “The Commissioner shall promulgate regulations gov-
5 erning the misbranding, adulteration, and dispensing of
6 tobacco products that are consistent with this chapter and
7 with the manner in which other products that are ingested
8 into the body are regulated under this Act, except that
9 the Commissioner may not promulgate a regulation that
10 prohibits the sale and distribution of a tobacco product
11 solely on the basis of the fact that tobacco causes disease.
12 Such regulations shall be promulgated not later than 6
13 months after the date of enactment of the Universal To-
14 bacco Settlement Act.

15 **“SEC. 904. MINIMUM REQUIREMENTS.**

16 “(a) MISBRANDING.—The regulations promulgated
17 under section 903 shall at a minimum require that a to-
18 bacco product be deemed to be misbranded if the labeling
19 of the package of such product is not in compliance with
20 the provisions of this chapter, of other applicable provi-
21 sions of this Act, or of sections 102(a), 103, 111, 112,
22 and 113 (as applicable to the type of product involved)
23 of the Universal Tobacco Settlement Act.

24 “(b) ADULTERATION.—The regulations promulgated
25 under section 903 shall at a minimum require that a to-

1 bacco product be deemed to be adulterated if the Commis-
 2 sioner determines that any tobacco additive in such prod-
 3 uct, regardless of the amount of such tobacco additive, ei-
 4 ther by itself or in conjunction with any other tobacco ad-
 5 ditive or ingredient significantly increases the risk to
 6 human health or the risk of addiction to such product.

7 **“SEC. 905. PERFORMANCE STANDARDS FOR TOBACCO**
 8 **PRODUCTS.**

9 “(a) IN GENERAL.—With respect to tobacco prod-
 10 ucts, the special controls required by section 513(a)(1)(B)
 11 shall include performance standards for such products as
 12 established in accordance with this section.

13 “(b) REQUIREMENTS.—A performance standard es-
 14 tablished under this section for a tobacco product—

15 “(1) shall include provisions to require the
 16 modification of the product to minimize the illness
 17 or injury that may result in consumers as a result
 18 of the use of such products, including the compo-
 19 nents of such products that produce dependence
 20 among such consumers; and

21 “(2) include, where appropriate—

22 “(A) provisions with respect to the con-
 23 struction, components, ingredients, and prop-
 24 erties of the tobacco product;

1 “(B) provisions for the testing (on a sam-
2 ple basis or, if necessary, on an individual
3 basis) of the tobacco product or, if it is deter-
4 mined that no other more practicable means are
5 available to the Secretary to assure the con-
6 formity of the device to the standard, provisions
7 for the testing (on a sample basis or, if nec-
8 essary, on an individual basis) by the Secretary
9 or by another person at the direction of the
10 Secretary;

11 “(C) provisions for the measurement of the
12 performance characteristics of the tobacco prod-
13 uct;

14 “(D) provisions requiring that the results
15 of each or of certain of the tests of the device
16 required to be made under subparagraph (B)
17 demonstrate that the tobacco product is in con-
18 formity with the portions of the standard for
19 which the test or tests were required; and

20 “(E) a provision requiring that the sale
21 and distribution of the device be restricted but
22 only to the extent that the sale and distribution
23 of a device may be otherwise restricted under
24 this Act of title I of the Universal Tobacco Set-
25 tlement Act.

1 “(c) EVALUATION.—The Secretary shall provide for
2 the periodic evaluation of a performance standard estab-
3 lished under this section to determine if such standards
4 should be changed to reflect new medical, scientific, or
5 other technological data.

6 “(d) PROCEDURES.—In carrying out this section, the
7 Secretary shall, to the maximum extent practicable—

8 “(1) use personnel, facilities, and other tech-
9 nical support available in other Federal agencies;

10 “(2) consult with the Scientific Advisory Com-
11 mittee established under section 906 and other Fed-
12 eral agencies concerned with standard-setting and
13 other nationally or internationally recognized stand-
14 ard-setting entities; and

15 “(3) invite appropriate participation, through
16 joint or other conferences, workshops, or other
17 means, by informed persons representative of sci-
18 entific, professional, industry, or consumer organiza-
19 tions who in the judgment of the Secretary can
20 make a significant contribution.

21 “(e) PROCEDURES.—

22 “(1) IN GENERAL.—The Secretary shall publish
23 in the Federal Register a notice of proposed rule-
24 making for the establishment, amendment, or rev-

1 ocation of any performance standard under this sec-
2 tion.

3 “(2) NOTICE REQUIREMENTS.—A notice of pro-
4 posed rulemaking for the establishment or amend-
5 ment of a performance standard under this section
6 shall—

7 “(A) set forth a finding with supporting
8 justification that the performance standard is
9 appropriate under subsection (b)(1) with re-
10 spect to the product; and

11 “(B) invite interested persons to submit an
12 existing performance standard for the product,
13 including a draft or proposed performance
14 standard, for consideration by the Secretary.

15 “(3) COMMENT PERIOD.—The Secretary shall
16 provide for a comment period of not less than 60
17 days.

18 “(4) APPLICABILITY OF SECTION 514.—The
19 provisions of paragraphs (3) and (4) of section
20 514(b) shall apply to the establishment, amendment,
21 or revocation of any performance standard under
22 this section, except that any reference to an advisory
23 committee shall be deemed to be a reference to the
24 Scientific Advisory Committee established under sec-
25 tion 906.

1 “(f) NICOTINE.—Except as provided in section 907,
2 a performance standard established under this section
3 may not require the elimination of nicotine from tobacco
4 products.

5 “(g) LIMITATION.—The Commissioner may not es-
6 tablish a performance standard under this section that has
7 the effect of prohibiting the sale and distribution, to indi-
8 viduals who are at least 18 years of age, of traditional
9 tobacco products in the basic form of the particular prod-
10 uct as described in the definition of the particular product
11 under section 100 of the Universal Tobacco Settlement
12 Act.

13 **“SEC. 906. SCIENTIFIC ADVISORY COMMITTEE.**

14 “(a) ESTABLISHMENT.—Not later than 1 year after
15 the date of enactment of the Universal Tobacco Settlement
16 Act, the Secretary shall establish an advisory committee,
17 to be known as the ‘Scientific Advisory Committee’, to as-
18 sist the Secretary in establishing, amending, or revoking
19 a performance standard under section 905.

20 “(b) MEMBERSHIP.—The Secretary shall appoint as
21 members of the Scientific Advisory Committee any individ-
22 uals with expertise in the medical, scientific, or other tech-
23 nological data involving the manufacture and use of to-
24 bacco products, and of appropriately diversified profes-
25 sional backgrounds. The Secretary may not appoint to the

1 Committee any individual who is in the regular full-time
2 employ of the Federal Government. The Secretary shall
3 designate one of the members of each advisory committee
4 to serve as chairperson of the Committee. The Committee
5 shall include as nonvoting members a representative of
6 consumer interests and a representative of interests of the
7 device manufacturing industry.

8 “(c) COMPENSATION AND EXPENSES.—

9 “(1) COMPENSATION.—Members of the Sci-
10 entific Advisory Committee who are not officers or
11 employees of the United States, while attending con-
12 ferences or meetings of the Committee or otherwise
13 serving at the request of the Secretary, shall be enti-
14 tled to receive compensation at rates to be fixed by
15 the Secretary, which rates may not exceed the daily
16 equivalent of the rate of pay for level 4 of the Senior
17 Executive Schedule under section 5382 of title 5,
18 United States Code, for each day (including travel-
19 time) they are so engaged.

20 “(2) EXPENSES.—While conducting the busi-
21 ness of the Scientific Advisory Committee away from
22 their homes or regular places of business, each mem-
23 ber may be allowed travel expenses, including per
24 diem in lieu of subsistence, as authorized by section
25 5703 of title 5 of the United States Code for per-

1 sons in the Government service employed intermit-
2 tently.

3 “(d) DUTIES.—The Scientific Advisory Committee
4 shall—

5 “(1) assist the Secretary in establishing,
6 amending, or revoking performance standards under
7 section 905;

8 “(2) examine and determine the effects of the
9 alteration of the nicotine yield levels in tobacco prod-
10 ucts;

11 “(3) examine and determine whether there is a
12 threshold level below which nicotine yields do not
13 produce dependence on the tobacco product involved,
14 and, if so, determine what that level is; and

15 “(4) review other safety, dependence or health
16 issues relating to tobacco products as determined ap-
17 propriate by the Secretary.

18 **“SEC. 907. REQUIREMENTS RELATING TO NICOTINE AND**
19 **OTHER CONSTITUENTS.**

20 “(a) GENERAL RULE.—Except as provided in sub-
21 section (d), the Secretary, based on a finding under sub-
22 section (b), may adopt a performance standard under sec-
23 tion 905 that requires the modification of a tobacco prod-
24 uct in a manner that involves—

1 “(1) the gradual reduction of nicotine yields of
2 the product; or

3 “(2) the reduction or elimination of other con-
4 stituents or harmful components of the product.

5 “(b) REQUIRED FINDING.—

6 “(1) IN GENERAL.—A modification described in
7 subsection (a) shall not be adopted unless the Sec-
8 retary determines that the modification—

9 “(A) will result in a significant reduction
10 in the health risks associated with the use of
11 the tobacco product involved;

12 “(B) is technologically feasible; and

13 “(C) will not result in the creation of a sig-
14 nificant demand for contraband products or
15 other tobacco products that do not meet the
16 performance standard that requires the modi-
17 fication.

18 “(2) CONTRABAND PRODUCTS.—For purposes
19 of paragraph (1)(C), the Secretary, in determining
20 whether a significant demand for contraband prod-
21 ucts will be created, shall take into account—

22 “(A) the estimated number of dependent
23 tobacco product users residing in the United
24 States on the date on which the proposed modi-
25 fication is being considered;

1 “(B) the availability to such users, or lack
2 thereof, of alternative products; and

3 “(C) any other factors determined appro-
4 priate by the Secretary.

5 “(3) SUBSTANTIAL EVIDENCE.—A determina-
6 tion under paragraph (2) shall be based upon sub-
7 stantial evidence as demonstrated through an admin-
8 istrative record developed through formal rule-
9 making procedures as required under title 5, United
10 States Code. Any such determination, and any deter-
11 mination by the Secretary with respect to a petition
12 filed for an administrative review of the modifica-
13 tion, shall be subject to judicial review in the United
14 States District Court for the District of Columbia.

15 “(c) LIMITATION.—Effective on the date that is 3
16 years after the date of enactment of the Universal Tobacco
17 Settlement Act, and notwithstanding any performance
18 standard established under this chapter, no cigarette or
19 tobacco product shall be sold or otherwise distributed in
20 the United States that exceeds a 12 milligram tar yield,
21 as determined using the testing methodology used by the
22 Federal Trade Commission on such date of enactment.

23 “(d) 12-YEAR PROHIBITION.—During the 12-year
24 period beginning on the date of enactment of the Universal
25 Tobacco Settlement Act, the Secretary shall not adopt any

1 performance standard under section 905 that requires the
 2 complete elimination of nicotine yields in a tobacco prod-
 3 uct.

4 “(e) ACTION AFTER PROHIBITION.—

5 “(1) IN GENERAL.—After the expiration of the
 6 12-year period referred to in subsection (d), the Sec-
 7 retary may establish or amend any performance
 8 standard to completely eliminate nicotine yields in a
 9 tobacco product.

10 “(2) DETERMINATION.—Any performance
 11 standard described in paragraph (1) shall not be
 12 adopted unless the Secretary determines that the
 13 standard—

14 “(A) will result in a significant overall re-
 15 duction in the health risks associated with the
 16 use of the tobacco product involved by consum-
 17 ers, including individuals who continue to use
 18 tobacco products but use such products less
 19 often and individuals who stop using such prod-
 20 ucts;

21 “(B) is technologically feasible; and

22 “(C) will not result in the creation of a sig-
 23 nificant demand for contraband products or
 24 other tobacco products that do not meet the
 25 performance standard.

1 “(3) HEALTH BENEFITS.—In making a deter-
2 mination with respect to health risks under para-
3 graph (2)(A), the Secretary shall consider—

4 “(A) the number of dependent tobacco
5 users residing in the United States on the date
6 on which the proposed performance standard is
7 being considered;

8 “(B) the availability and demonstrated
9 market acceptance of alternative products;

10 “(C) the effectiveness of tobacco product
11 cessation techniques and devices on the market
12 on the date on which the proposed performance
13 standard is being considered; and

14 “(D) any other factors determined appro-
15 priate by the Secretary.

16 “(4) PREPONDERANCE OF THE EVIDENCE.—A
17 determination under paragraph (2) with respect to
18 the elimination of nicotine, or an action that would
19 have an effect comparable to the elimination of nico-
20 tine, shall be based upon a preponderance of the evi-
21 dence as demonstrated, upon the request of a manu-
22 facturer, through a Part 12 hearing or notice and
23 comment rulemaking as required under title 5, Unit-
24 ed States Code. Any such determination, and any
25 determination by the Secretary with respect to a pe-

1 tition filed for an administrative review of the modi-
2 fication, shall be subject to judicial review in the
3 United States District Court for the District of Co-
4 lumbia.

5 “(5) PHASE-IN.—A performance standard de-
6 scribed in paragraph (1) shall be implemented dur-
7 ing a 2-year phase-in period beginning on the date
8 on which all administrative or judicial action pro-
9 vided for under this chapter with respect to the
10 standard is completed.

11 “(f) TOBACCO CONSTITUENTS.—The Secretary shall
12 promulgate regulations for the testing, reporting and dis-
13 closure of tobacco smoke constituents that the Secretary
14 determines the public should be informed of to protect
15 public health, including tar, nicotine, and carbon mon-
16 oxide. Such regulations may require label and advertising
17 disclosures relating to tar and nicotine.

18 **“SEC. 908. REDUCED RISK PRODUCTS.**

19 “(a) MISBRANDING.—Except as provided in sub-
20 section (b), the regulations promulgated in accordance
21 with section 904(a) shall require that a tobacco product
22 be deemed to be misbranded if the labeling of the package
23 of the product, or the claims of the manufacturer in con-
24 nection with the product, can reasonably be interpreted
25 by an objective consumer as stating or implying that the

1 product presents a reduced health risk as compared to
2 other similar products.

3 “(b) EXCEPTION.—

4 “(1) IN GENERAL.—Subsection (a) shall not
5 apply to the labeling of a tobacco product, or the
6 claims of the manufacturer in connection with the
7 product, if—

8 “(A) the manufacturer, based on scientific
9 evidence, demonstrates to the Commissioner
10 that the product significantly reduces the risk
11 to the health of the user as compared to other
12 similar tobacco products; and

13 “(B) the Commissioner approves the spe-
14 cific claim that will be made a part of the label-
15 ing of the product, or the specific claims of the
16 manufacturer in connection with the product.

17 “(2) REDUCTION IN HARM.—The Commissioner
18 shall promulgate regulations to permit the inclusion
19 of scientifically-based specific health claims on the
20 labeling of a tobacco product package, or the making
21 of such claims by the manufacturer in connection
22 with the product, where the Commissioner deter-
23 mines that the inclusion or making of such claims
24 would reduce harm to consumers and otherwise pro-
25 mote public health.

1 “(c) DEVELOPMENT OF REDUCED RISK PRODUCT
2 TECHNOLOGY.—

3 “(1) NOTIFICATION OF COMMISSIONER.—The
4 manufacturer of a tobacco product shall provide
5 written notice to the Commissioner upon the devel-
6 opment or acquisition by the manufacturer of any
7 technology that would reduce the risk of such prod-
8 ucts to the health of the user.

9 “(2) CONFIDENTIALITY.—The Commissioner
10 shall promulgate regulations to provide a manufac-
11 turer with appropriate confidentiality protections
12 with respect to technology that is the subject of a
13 notification under paragraph (1) that contains evi-
14 dence that the technology involved is in the early de-
15 velopmental stages.

16 “(3) LICENSING.—

17 “(A) IN GENERAL.—With respect to any
18 technology developed or acquired under para-
19 graph (1), the manufacturer shall permit the
20 use of such technology by other manufacturers
21 of tobacco products to which this chapter ap-
22 plies.

23 “(B) FEES.—The Commissioner shall pro-
24 mulgate regulations to provide for the payment
25 of a commercially reasonable fee by each manu-

1 facturer that uses the technology described
2 under subparagraph (A) to the manufacturer
3 that submits the notice under paragraph (1) for
4 such technology. Such regulations shall contain
5 procedures for the resolution of fee disputes be-
6 tween manufacturers under this subparagraph.

7 “(d) REQUIREMENT OF MANUFACTURE AND MAR-
8 KETING.—

9 “(1) PURPOSE.—It is the purpose of this sub-
10 section to provide for a mechanism to ensure that
11 tobacco products that are designed to be less hazard-
12 ous to the health of users are developed, tested, and
13 made available to consumers.

14 “(2) DETERMINATION.—Upon a determination
15 by the Commissioner that the manufacture of a to-
16 bacco product that is less hazardous to the health of
17 users is technologically feasible, the Commissioner
18 may, in accordance with this subsection, require that
19 certain manufacturers of such products manufacture
20 and market such less hazardous products.

21 “(3) MANUFACTURER.—

22 “(A) REQUIREMENT.—Except as provided
23 in subparagraph (B), the requirement under
24 paragraph (2) shall apply to any manufacturer
25 that provides a notification to the Commissioner

1 under subsection (c)(1) concerning the tech-
2 nology that is the subject of the determination
3 of the Commissioner.

4 “(B) EXCEPTION.—The requirement under
5 subparagraph (A) shall not apply to a manufac-
6 turer if—

7 “(i) the manufacturer elects not to
8 manufacture such products and provides
9 notice to the Commissioner of such elec-
10 tion; and

11 “(ii) the manufacturer agrees to pro-
12 vide the technology involved, for a commer-
13 cially reasonable fee, to other manufactur-
14 ers that enter into agreements to use such
15 technology to manufacture and market to-
16 bacco products that are less hazardous to
17 the health of users.

18 “(4) ACTION BY PUBLIC HEALTH SERVICE.—If
19 no manufacturer elects or agrees to manufacture
20 and market tobacco products that are less hazardous
21 to the health of users through the use of technology
22 available pursuant to this subsection within a rea-
23 sonable period of time, as determined appropriate by
24 the Commissioner, the Commissioner, in consultation
25 with the Secretary and acting through the Public

1 Health Service, shall, either directly or through
2 grants or contracts, provide for the manufacture and
3 marketing of such products.

4 **“SEC. 909. GOOD MANUFACTURING PRACTICE STANDARDS.**

5 “(a) AUTHORITY.—

6 “(1) IN GENERAL.—The Secretary may, in ac-
7 cordance with paragraph (2), prescribe regulations
8 requiring that the methods used in, and the facilities
9 and controls used for, the manufacture, pre-produc-
10 tion design validation (including a process to assess
11 the performance of a tobacco product), packing, and
12 storage of a tobacco product conform to current
13 good manufacturing practice, as prescribed in such
14 regulations, to ensure that such products will be in
15 compliance with this chapter.

16 “(2) REQUIREMENTS PRIOR TO REGULA-
17 TIONS.—Prior to the Secretary promulgating any
18 regulation under paragraph (1) the Secretary
19 shall—

20 “(A) afford the Scientific Advisory Com-
21 mittee established under section 906 an oppor-
22 tunity (with a reasonable time period) to submit
23 recommendations with respect to the regula-
24 tions proposed to be promulgated; and

1 “(B) afford opportunity for an oral hear-
2 ing.

3 “(b) MINIMUM REQUIREMENTS.—The regulations
4 promulgated under subsection (a) shall at a minimum re-
5 quire—

6 “(1) the implementation of a quality control
7 system by the manufacturer of a tobacco product;

8 “(2) a process for the inspection of tobacco
9 product material prior to the packaging of such
10 product to be determined by the Commissioner;

11 “(3) procedures for the proper handling and
12 storage of the packaged tobacco product;

13 “(4) after consultation with the Administrator
14 of the Environmental Protection Agency, the devel-
15 opment and adherence to applicable tolerances with
16 respect to pesticide chemical residues in or on com-
17 modities used by the manufacturer in the manufac-
18 ture of the finished tobacco product;

19 “(5) the inspection of facilities by officials of
20 the Food and Drug Administration as otherwise pro-
21 vided for in this Act; and

22 “(6) record keeping and the reporting of certain
23 information.

24 “(c) PETITIONS FOR EXEMPTIONS AND
25 VARIANCES.—

1 “(1) IN GENERAL.—Any person subject to any
2 requirement prescribed by regulations under sub-
3 section (a) may petition the Secretary for an exemp-
4 tion or variance from such requirement. Such a peti-
5 tion shall be submitted to the Secretary in such form
6 and manner as the Secretary shall prescribe and
7 shall—

8 “(A) in the case of a petition for an ex-
9 emption from a requirement, set forth the basis
10 for the petitioner’s determination that compli-
11 ance with the requirement is not required to en-
12 sure that the device is in compliance with this
13 chapter;

14 “(B) in the case of a petition for a vari-
15 ance from a requirement, set forth the methods
16 proposed to be used in, and the facilities and
17 controls proposed to be used for, the manufac-
18 ture, packing, and storage of the product in lieu
19 of the methods, facilities, and controls pre-
20 scribed by the requirement; and

21 “(C) contain such other information as the
22 Secretary shall prescribe.

23 “(2) SCIENTIFIC ADVISORY COMMITTEE.—The
24 Secretary may refer to the Scientific Advisory Com-
25 mittee established under section 906 any petition

submitted under paragraph (1). The Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days of the date of the petition's referral. Within 60 days after—

“(A) the date the petition was submitted to the Secretary under paragraph (1); or

“(B) if the petition was referred to the Scientific Advisory Committee, the expiration of the 60-day period beginning on the date the petition was referred to such Committee;

whichever occurs later, the Secretary shall by order either deny the petition or approve it.

“(3) APPROVAL OF PETITION.—

“(A) IN GENERAL.—The Secretary may approve—

“(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the product will comply with this chapter; and

“(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to

1 be used in, and the facilities and controls
2 to be used for, the manufacture, packing,
3 and storage of the product in lieu of the
4 methods, controls, and facilities prescribed
5 by the requirement are sufficient to ensure
6 that the product will comply with this
7 chapter.

8 “(B) CONDITIONS.—An order of the Sec-
9 retary approving a petition for a variance shall
10 prescribe such conditions respecting the meth-
11 ods used in, and the facilities and controls used
12 for, the manufacture, packing, and storage of
13 the tobacco product to be granted the variance
14 under the petition as may be necessary to en-
15 sure that the product will comply with this
16 chapter.

17 “(4) INFORMAL HEARING.—After the issuance
18 of an order under paragraph (2) respecting a peti-
19 tion, the petitioner shall have an opportunity for an
20 informal hearing on such order.

21 “(d) AGRICULTURAL PRODUCERS.—The Secretary
22 may not promulgate any regulation under this section that
23 has the effect of placing regulatory burdens on tobacco
24 producers (as such term is used for purposes of the Agri-
25 cultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)

1 and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.))
2 in excess of the regulatory burdens generally placed on
3 other agricultural commodity producers.

4 **“SEC. 910. DISCLOSURE AND REPORTING OF NONTOBACCO**
5 **INGREDIENTS.**

6 “(a) ANNUAL SUBMISSION.—

7 “(1) IN GENERAL.—Each manufacturer of a to-
8 bacco product shall annually provide the Secretary
9 with—

10 “(A) a list of all ingredients, substances,
11 and compounds (other than tobacco, water or
12 reconstituted tobacco sheet made wholly from
13 tobacco) that are added to the tobacco (and the
14 paper or filter of the product if applicable) in
15 the manufacture of the tobacco product, for
16 each brand of tobacco product so manufactured;
17 and

18 “(B) a description of the quantity of the
19 ingredients, substances, and compounds that
20 are listed under subparagraph (A) with respect
21 to each brand of tobacco product.

22 “(2) GENERAL DISCLOSURE OF SAFETY.—With
23 respect to each annual submission under paragraph
24 (1) during the 5-year period beginning on the date
25 of enactment of the Universal Tobacco Settlement

1 Act, the manufacturer shall, for each ingredient,
 2 substance, or compound contained on the list of the
 3 manufacturer for the year involved, disclose whether
 4 the manufacturer has determined that the ingredi-
 5 ent, substance, or compound would be exempt from
 6 public disclosure under this section.

7 “(b) SAFETY ASSESSMENTS.—

8 “(1) REQUIREMENT.—Not later than 5 years
 9 after the date of enactment of the Universal Tobacco
 10 Settlement Act, and annually thereafter, each manu-
 11 facturer shall submit to the Secretary a safety as-
 12 sessment for each ingredient, substance, or
 13 compound that is listed under subsection (a)(1)(A)
 14 with respect to each brand of tobacco product manu-
 15 factured by each such manufacturer.

16 “(2) BASIS OF ASSESSMENT.—The safety as-
 17 sessment of an ingredient, substance, or compound
 18 described in paragraph (1) shall—

19 “(A) be based on the best scientific evi-
 20 dence available at the time of the submission of
 21 the assessment; and

22 “(B) result in a finding that there is a rea-
 23 sonable certainty in the minds of competent sci-
 24 entists that the ingredient, substance, or

1 compound is not harmful in the quantities used
2 under the intended conditions of use.

3 “(c) PROHIBITION.—

4 “(1) REGULATIONS.—Not later than 12 months
5 after the date of enactment of the Universal Tobacco
6 Settlement Act, the Secretary shall promulgate regu-
7 lations to prohibit the use of any ingredient, sub-
8 stance, or compound in the tobacco product of a
9 manufacturer—

10 “(A) if no safety assessment has been sub-
11 mitted by the manufacturer for the ingredient,
12 substance, or compound; or

13 “(B) if the Secretary disapproves of the
14 safety of the ingredient, substance, or
15 compound that was the subject of the assess-
16 ment under paragraph (2).

17 “(2) REVIEW OF ASSESSMENTS.—

18 “(A) GENERAL REVIEW.—Not later than
19 90 days after the receipt of a safety assessment
20 under subsection (b), the Secretary shall review
21 the findings contained in such assessment.

22 “(B) APPROVAL OR DISAPPROVAL.—Not
23 later than 90 days after the completion of a re-
24 view under subparagraph (A), the Secretary
25 shall approve or disapprove of the safety of the

1 ingredient, substance, or compound that was
 2 the subject of the assessment and provide notice
 3 to the manufacturer of such action.

4 “(C) INACTION BY SECRETARY.—If the
 5 Secretary fails to act with respect to an assess-
 6 ment during the 90-day period referred to in
 7 subparagraph (B), the safety of the ingredient,
 8 substance, or compound involved shall be
 9 deemed to be approved.

10 “(d) DISCLOSURE OF INGREDIENTS TO THE PUB-
 11 LIC.—

12 “(1) INITIAL DISCLOSURE.—The regulations
 13 promulgated in accordance with section 904(a) shall,
 14 at a minimum, require that, during the 5-year pe-
 15 riod beginning on the date that is 6 months after
 16 the date of enactment of the Universal Tobacco Set-
 17 tlement Act, a tobacco product be deemed to be mis-
 18 branded if the labeling of the package of such prod-
 19 uct does not disclose the ingredients of the product
 20 in accordance with the labeling provisions applicable
 21 to food ingredients under this Act.

22 “(2) DISCLOSURE OF ALL INGREDIENTS.—The
 23 regulations referred to in paragraph (1) shall, at a
 24 minimum, require that, subsequent to the 5-year pe-
 25 riod referred to in such paragraph, a tobacco prod-

1 uct be deemed to be misbranded if the labeling of
2 the package of such product does not disclose all in-
3 gredients, substances, or compounds contained in
4 the product in accordance with the labeling provi-
5 sions applicable to food ingredients under this Act.

6 “(3) EXCEPTION.—Notwithstanding paragraph
7 (1), the Secretary may require that any ingredient,
8 substance, or compound contained in a tobacco prod-
9 uct that is otherwise exempt from disclosure be dis-
10 closed if the Secretary determines that such ingredi-
11 ent, substance, or compound is not safe as provided
12 for in subsection (c).

13 “(e) CONFIDENTIALITY.—Any information reported
14 to or otherwise obtained by the Secretary under this sec-
15 tion, and that is not required to be disclosed to the public
16 under subsection (d), shall be exempt from disclosure pur-
17 suant to subsection (a) of section 552 of title 5, United
18 States Code, by reason of subsection (b)(4) of such sec-
19 tion, shall be considered confidential and shall not be dis-
20 closed and may not be used by the Secretary as the basis
21 for the establishment or amendment of a performance
22 standard under section 905, except that such information
23 may be disclosed to other officers or employees concerned
24 with carrying out this Act or when relevant in any pro-
25 ceeding under this Act.

1 **“SEC. 911. NONAPPLICATION OF CERTAIN PROVISIONS.**

2 “Sections 502(j), 516, 518, and 520(f) shall not
3 apply to tobacco products to which this chapter applies.”.

4 **Subtitle F—Compliance Plans and**
5 **Corporate Culture**

6 **SEC. 151. COMPLIANCE PLANS.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of enactment of this Act, and annually thereafter,
9 each manufacturer of a tobacco product shall prepare and
10 submit to the Secretary a plan to ensure that the manu-
11 facturer complies with all applicable Federal, State, and
12 local laws with respect to the manufacture and distribu-
13 tion of tobacco products.

14 (b) REQUIREMENTS.—A compliance plan submitted
15 under subsection (a) shall—

16 (1) contain the assurances of the manufacturer
17 that tobacco products will only be manufactured and
18 distributed in accordance with this Act and the
19 amendments made by this Act;

20 (2) identify methods to achieve the goals of—

21 (A) reducing the access of individuals
22 under 18 years of age to tobacco products; and

23 (B) reducing the incidence of the underage
24 consumption of tobacco products;

1 (3) provide for the implementation of internal
2 incentives for achieving the reductions described in
3 paragraph (2);

4 (4) provide for the implementation of internal
5 incentives for the development of tobacco products
6 with a reduced health risk;

7 (5) contain a description of the compliance pro-
8 grams implemented under section 152 and the effec-
9 tiveness of such programs; and

10 (6) contain such other information as the Sec-
11 retary may require.

12 **SEC. 152. COMPLIANCE PROGRAMS.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this Act, each manufacturer of a to-
15 bacco product shall establish and implement one or more
16 compliance programs designed to ensure the compliance
17 of the manufacturer with Federal, State, and local laws
18 that limit the access of individuals under 18 years of age
19 to tobacco products.

20 (b) REQUIREMENTS.—A compliance program estab-
21 lished under subsection (a) shall—

22 (1) implement standards and procedures to be
23 adhered to by employees and agents that are de-
24 signed to reduce the incidence of violations of the
25 laws described in subsection (a);

1 (2) provide for the assignment to 1 or more
2 specific corporate executives of the overall respon-
3 sibility for ensuring that the manufacturer complies
4 with the standards and procedures applicable under
5 this Act;

6 (3) ensure that due care is taken by the cor-
7 porate executives designated under paragraph (2) to
8 avoid delegating substantial discretionary authority
9 to individuals who the executives know (or should
10 have known through the exercise of due diligence)
11 have a propensity to disregard corporate policy;

12 (4) include procedures to inform all employees
13 and agents of the relevant standards and procedures
14 applicable to the manufacturer and the tobacco
15 products manufactured under this Act, including
16 procedures for the implementation of training pro-
17 grams or the dissemination of informational mate-
18 rials;

19 (5) provide for the conduct of internal audits,
20 and the establishment of hotlines and other meas-
21 ures to promote compliance with the laws described
22 in subsection (a);

23 (6) provide for the application of appropriate
24 disciplinary mechanisms and measures to employees
25 who are directly or indirectly violating the laws de-

1 scribed in subsection (a) or otherwise not complying
2 with this Act;

3 (7) include measures to respond appropriately
4 where violations of laws described in subsection (a)
5 are alleged to have occurred or are occurring;

6 (8) include the promulgation of corporate policy
7 statements that express and explain the commitment
8 of the manufacturer to—

9 (A) compliance with applicable Federal,
10 State, and local laws;

11 (B) reducing the use of tobacco products
12 by individuals who are under 18 years of age;
13 and

14 (C) developing tobacco products that pose
15 a reduced risk to the health of the user;

16 (9) provide for the designation of a specific cor-
17 porate executive to serve as the compliance officer to
18 promote efforts to fulfill the commitment of the
19 manufacturer;

20 (10) include provisions for compiling reports on
21 compliance with this Act and the laws described in
22 paragraph (1) and including those reports in mate-
23 rials provided to stockholders; and

24 (11) include any other measures determined ap-
25 propriate by the Secretary.

1 (c) REPORTING OF NONCOMPLIANCE.—Under the
2 compliance program of a manufacturer, the manufactur-
3 er’s employees shall be encouraged to report to the compli-
4 ance officer any known or alleged violations of this Act
5 (or an amendment made by this Act), including violations
6 by distributors or retailers. The compliance officer shall
7 furnish a copy of all such reports to the Secretary for ref-
8 erence to the appropriate Federal or State enforcement
9 authority.

10 (d) RETAIL ESTABLISHMENTS.—As part of the com-
11 pliance program established under this section, a manu-
12 facturer shall carry out efforts to encourage and assist (in-
13 cluding retail compliance checks and financial incentives)
14 retailers of the tobacco products manufactured by the
15 manufacturer in compliance with the Federal, State, and
16 local laws described in subsection (a).

17 **SEC. 153. WHISTLEBLOWER PROTECTIONS.**

18 (a) PROHIBITION OF REPRISALS.—An employee of
19 any manufacturer, distributor, or retailer of a tobacco
20 product may not be discharged, demoted, or otherwise dis-
21 criminated against (with respect to compensation, terms,
22 conditions, or privileges of employment) as a reprisal for
23 disclosing to an employee of the Food and Drug Adminis-
24 tration, the Department of Justice, or any State or local
25 regulatory or enforcement authority, information relating

1 to a substantial violation of law related to this Act (or
2 an amendment made by this Act) or a State or local law
3 enacted to further the purposes of this Act.

4 (b) ENFORCEMENT.—Any employee or former em-
5 ployee who believes that such employee has been dis-
6 charged, demoted, or otherwise discriminated against in
7 violation of subsection (a) may file a civil action in the
8 appropriate United States district court before the end of
9 the 2-year period beginning on the date of such discharge,
10 demotion, or discrimination.

11 (c) REMEDIES.—If the district court determines that
12 a violation has occurred, the court may order the manufac-
13 turer, distributor, or retailer involved to—

14 (1) reinstate the employee to the employee’s
15 former position;

16 (2) pay compensatory damages; or

17 (3) take other appropriate actions to remedy
18 any past discrimination.

19 (d) LIMITATION.—The protections of this section
20 shall not apply to any employee who—

21 (1) deliberately causes or participates in the al-
22 leged violation of law or regulation; or

23 (2) knowingly or recklessly provides substan-
24 tially false information to the Food and Drug Ad-

1 ministration, the Department of Justice, or any
2 State or local regulatory or enforcement authority.

3 **SEC. 154. PROVISIONS RELATING TO LOBBYING.**

4 (a) DEFINITIONS.—For purposes of this section, the
5 terms “lobbying activities”, “lobbying firm”, and “lobby-
6 ist” have the meanings given such terms by section 3 of
7 the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

8 (b) GENERAL REQUIREMENT.—A manufacturer, dis-
9 tributor, or retailer of a tobacco product shall require that
10 any lobbyist or lobbying firm employed or retained by the
11 manufacturer, distributor, or retailer, or any other individ-
12 ual who performs lobbying activities on behalf of the man-
13 ufacturer, distributor, or retailer, as part of the employ-
14 ment or retainer agreement refrain from supporting or op-
15 posing any Federal or State legislation, or otherwise sup-
16 porting or opposing any governmental action on any mat-
17 ter without the express consent of the manufacturer, dis-
18 tributor, or retailer.

19 (c) ADDITIONAL AGREEMENTS.—An individual shall
20 not be employed or retained to perform lobbying activities
21 on behalf of a manufacturer, distributor, or retailer of a
22 tobacco product unless such individual enters into a signed
23 agreement with the manufacturer, distributor, or retailer
24 that acknowledges that the individual—

1 (1) is fully aware of, and will fully comply with,
 2 all applicable laws and regulations relating to the
 3 manufacture and distribution of tobacco products;

4 (2) has reviewed and will fully comply with the
 5 requirements of this Act (and the amendments made
 6 by this Act);

7 (3) has reviewed and will fully comply with any
 8 consent decree entered into under title VI as that
 9 decree applies to the manufacturer, distributor, or
 10 retailer involved; and

11 (4) has reviewed and will fully comply with the
 12 business conduct policies and other applicable poli-
 13 cies and commitments (including those relating to
 14 the prevention of underage tobacco use) of the man-
 15 ufacturer, distributor, or retailer involved.

16 **SEC. 155. TERMINATION OF CERTAIN ENTITIES.**

17 (a) REQUIREMENT.—Not later than 90 days after the
 18 date of enactment of this Act, manufacturers, distributors,
 19 or retailers of tobacco products shall provide for the termi-
 20 nation of the activities of the Tobacco Institute and the
 21 Council for Tobacco Research, U.S.A. and the Institute
 22 and Council shall be dissolved.

23 (b) ESTABLISHMENT OF OTHER ENTITIES.—

24 (1) AUTHORITY.—Manufacturers, distributors,
 25 or retailers of tobacco products may form or partici-

1 pate in any trade organization or other industry as-
2 sociation only in accordance with this subsection.

3 (2) BOARD OF DIRECTORS.—A trade organiza-
4 tion or other industry association formed or partici-
5 pated in under this subsection shall—

6 (A) shall be administered by an independ-
7 ent board of directors, of which—

8 (i) during the 10-year period begin-
9 ning on the date on which the organization
10 or association is formed or first partici-
11 pated in under this subsection, not less
12 than 20 percent (at least 1 member) shall
13 be individuals who are not current or
14 former directors, officers, or employees of
15 an entity terminated under subsection (a)
16 or of the members of the association or or-
17 ganization; and

18 (ii) during the life of the association
19 or organization, no member shall be a di-
20 rector of any of the members of the asso-
21 ciation or organization;

22 (B) be administered by officers who are
23 appointed by the board of directors and who are
24 not otherwise employed by any of the members
25 of the association or organization; and

1 (C) be provided with legal advice by a legal
 2 adviser who is appointed by the board of direc-
 3 tors and who is not otherwise employed by any
 4 of the members of the association or organiza-
 5 tion.

6 (3) BY-LAWS.—A trade organization or other
 7 industry association formed or participated in under
 8 this subsection shall adopt by-laws that—

9 (A) prohibit meetings by members of the
 10 association or organization who are competitors
 11 in the tobacco industry except under the spon-
 12 sorship of the association or organization;

13 (B) require that every meeting of the
 14 board of directors, or a subcommittee of the
 15 board or other general committee, proceed
 16 under and strictly adhere to an agenda that is
 17 approved by the legal counsel and circulated in
 18 advance; and

19 (C) require the taking of minutes that de-
 20 scribe the substance of any meeting of the
 21 members of the association or organization and
 22 the maintenance of such minutes in the records
 23 of the association or organization for a period
 24 of 5 years following the meeting.

25 (c) DEPARTMENT OF JUSTICE.—

1 (1) OVERSIGHT.—The Attorney General and, as
2 appropriate, State antitrust authorities shall exercise
3 oversight authority over any association or organiza-
4 tion to which subsection (b) applies.

5 (2) ACCESS AND INSPECTION.—During the 10-
6 year period beginning on the date on which an asso-
7 ciation or organization to which subsection (b) ap-
8 plies is formed, the Attorney General and, as appro-
9 priate State antitrust authorities shall, upon the
10 provision of reasonable notice to the legal counsel of
11 the association or organization, have access to—

12 (A) all books, records, meeting agenda and
13 minutes, and other documents maintained by
14 the association or organization; and

15 (B) the directors, officers, and employees
16 of the association or organization for interview
17 purposes.

18 (3) MULTI-STATE COMMITTEE.—Two or more
19 States, acting through the attorney general of each
20 such State, may establish a multi-State oversight
21 committee to assist the Attorney General in exercis-
22 ing the oversight responsibilities under this section.

23 (4) CONFIDENTIALITY.—The Attorney General
24 shall promulgate regulations to provide that mate-

1 rials provided under paragraph (2) are protected
2 with appropriate confidentiality protections.

3 (d) ANTITRUST EXEMPTIONS.—The provisions of the
4 Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29
5 U.S.C. 52 et seq.), and any other Federal or State anti-
6 trust laws shall not apply to an association or organization
7 to which subsection (b) applies.

8 **SEC. 156. ENFORCEMENT.**

9 (a) ASSESSMENT.—

10 (1) IN GENERAL.—The Secretary may assess a
11 civil penalty against any manufacturer of a tobacco
12 product of up to \$25,000 per day of violation when-
13 ever, on the basis of any available information, the
14 Secretary finds that such manufacturer has violated
15 or is violating any requirement of this subtitle.

16 (2) LIMITATION.—The authority of the Sec-
17 retary under this subsection shall be limited to mat-
18 ters where the total penalty sought does not exceed
19 \$200,000 and the first alleged date of violation oc-
20 curred not more than 12 months prior to the initi-
21 ation of the administrative action, except where the
22 Secretary and the Attorney General jointly deter-
23 mine that a matter involving a larger penalty
24 amount or longer period of violation is appropriate
25 for action.

1 (3) JUDICIAL REVIEW.—Any determination by
2 the Administrator and the Attorney General under
3 paragraph (2) shall not be subject to judicial review.

4 (b) PROCEDURE.—

5 (1) IN GENERAL.—A civil penalty under sub-
6 section (a) shall be assessed by the Secretary by an
7 order made after an opportunity for a hearing on
8 the record in accordance with sections 554 and 556
9 of title 5 of the United States Code. The Secretary
10 shall issue reasonable rules for discovery and other
11 procedures for hearings under this paragraph. Be-
12 fore issuing such an order, the Secretary shall give
13 written notice to the manufacturer against whom the
14 assessment is being made of the Secretary's proposal
15 to issue such an order and provide such manufac-
16 turer with an opportunity to request such a hearing
17 on the order, within 30 days of the date the notice
18 is received by such manufacturer.

19 (2) MODIFICATIONS.—The Secretary may com-
20 promise, modify, or remit, with or without condi-
21 tions, any penalty which may be imposed under this
22 section.

23 (c) FIELD CITATION PROGRAM.—

24 (1) IMPLEMENTATION.—The Secretary may
25 provide for the implementation, after consultation

1 with the Attorney General and the States, of a field
2 citation program through regulations establishing
3 appropriate minor violations of this subtitle for
4 which field citations, assessing civil penalties not to
5 exceed \$5,000 per day of violation, may be issued by
6 officers or employees designated by the Secretary.

7 (2) HEARING.—Any manufacturer to which a
8 field citation is assessed may, within a reasonable
9 time as prescribed by the Secretary through regula-
10 tion, elect to pay the penalty assessment or to re-
11 quest a hearing on the field citation. If a request for
12 a hearing is not made within the time specified in
13 the regulation, the penalty assessment in the field ci-
14 tation shall be final. Such hearing shall not be sub-
15 ject to section 554 or 556 of title 5 of the United
16 States Code, but shall provide a reasonable oppor-
17 tunity to be heard and to present evidence.

18 (3) NO DEFENSE.—Payment of a civil penalty
19 required by a field citation under this paragraph
20 shall not be a defense to further enforcement by the
21 United States or a State to correct a violation, or to
22 assess the statutory maximum penalty pursuant to
23 other authorities in the subtitle, if the violation con-
24 tinues.

25 (d) JUDICIAL REVIEW.—

1 (1) RIGHT.—Any manufacturer against whom a
2 civil penalty is assessed under subsection (c) or to
3 which a penalty order is issued under subsection (a)
4 may seek review of such assessment in the United
5 States District Court for the District of Columbia or
6 for the district in which the violation is alleged to
7 have occurred or in which the principal place of
8 business of the manufacturer is located, by filing in
9 such court within 30 days following the date the
10 penalty order becomes final under subsection para-
11 graph (b), the assessment becomes final under sub-
12 section (c), or a final decision following a hearing
13 under subsection (c) is rendered, and by simulta-
14 neously sending a copy of the filing by certified mail
15 to the Secretary and the Attorney General.

16 (2) FILING.—Within 30 days after a filing
17 under paragraph (1), the Secretary shall file in the
18 court involved a certified copy, or certified index, as
19 appropriate, of the record on which the penalty
20 order or assessment was issued.

21 (3) ACTION BY COURT.—A court shall not set
22 aside or remand a penalty order or assessment
23 under this section unless there is not substantial evi-
24 dence in the record, taken as a whole, to support the

1 finding of a violation or unless the order or penalty
 2 assessment constitutes an abuse of discretion.

3 (4) LIMITATION.—A penalty order or assess-
 4 ment under this section shall not be subject to re-
 5 view by any court except as provided in this sub-
 6 section. In any such proceedings, the United States
 7 may seek to recover civil penalties ordered or as-
 8 sessed under this section.

9 (e) FAILURE TO PAY.—

10 (1) IN GENERAL.—If any manufacturer fails to
 11 pay an assessment of a civil penalty or fails to com-
 12 ply with an penalty order under this section—

13 (A) after the order or assessment has be-
 14 come final; or

15 (B) after a court, in an action brought
 16 under subsection (d), has entered a final judg-
 17 ment in favor of the Secretary;

18 the Secretary shall request the Attorney General to
 19 bring a civil action in an appropriate district court
 20 to enforce the order or to recover the amount or-
 21 dered or assessed (plus interest at rates established
 22 pursuant to section 6621(a)(2) of the Internal Reve-
 23 nue Code of 1986 from the date of the final order
 24 or decision or the date of the final judgment, as the
 25 case may be). In such an action, the validity,

1 amount, and appropriateness of such order or as-
 2 sessment shall not be subject to review.

3 (2) ENFORCEMENT EXPENSES.—Any manufac-
 4 turer who fails to pay on a timely basis a civil pen-
 5 alty ordered or assessed under this section shall be
 6 required to pay, in addition to such penalty and in-
 7 terest, the United States enforcement expenses, in-
 8 cluding attorneys fees and costs incurred by the
 9 United States for collection proceedings and a quar-
 10 terly nonpayment penalty for each quarter during
 11 which such failure to pay persists. Such nonpayment
 12 penalty shall be 10 percent of the aggregate amount
 13 of such manufacturer’s outstanding penalties and
 14 nonpayment penalties accrued as of the beginning of
 15 such quarter.

16 (f) SCARLET LETTER ADVERTISING.—

17 **TITLE II—REDUCTION IN** 18 **UNDERAGE TOBACCO USE**

19 **SEC. 201. PURPOSE.**

20 It is the purpose of this title to encourage the achieve-
 21 ment of dramatic and immediate reductions in the number
 22 of underage consumers of tobacco products through the
 23 imposition of substantial financial surcharges on manufac-
 24 turers if certain underage tobacco-use reduction targets
 25 are not met.

1 **SEC. 202. DETERMINATION OF UNDERAGE USE BASE PER-**
2 **CENTAGES.**

3 (a) CIGARETTES.—For purposes of this section, the
4 underage use base percentage for cigarettes shall be a per-
5 centage determined by the Secretary, weighted by the rel-
6 ative population of the age groups involved as determined
7 using data compiled in 1995 by the Bureau of the Census,
8 based on—

9 (1) the average of the percentages of 12th grad-
10 ers (individuals who are 16 or 17 years of age) who
11 used cigarette products on a daily basis for each of
12 the calendar years 1986 through 1996;

13 (2) the average of the percentages of 10th grad-
14 ers (individuals who are 14 or 15 years of age) who
15 used cigarette products on a daily basis for each of
16 the calendar years 1991 through 1996; and

17 (3) the average of the percentages of 8th grad-
18 ers (individuals who are 13 years of age) who used
19 cigarette products on a daily basis for each of the
20 calendar years 1991 through 1996.

21 (b) SMOKELESS TOBACCO.—For purposes of this sec-
22 tion, the underage use base percentage for smokeless to-
23 bacco products shall be a percentage determined by the
24 Secretary, weighted by the relative population of the age
25 groups involved as determined using data compiled in
26 1995 by the Bureau of the Census, based on—

1 (1) the average of the percentages of 12th grad-
2 ers (individuals who are 16 or 17 years of age) who
3 used smokeless tobacco products on a daily basis in
4 1996;

5 (2) the average of the percentages of 10th grad-
6 ers (individuals who are 14 or 15 years of age) who
7 used smokeless tobacco products on a daily basis in
8 1996; and

9 (3) the average of the percentages of 8th grad-
10 ers (individuals who are 13 years of age) who used
11 smokeless tobacco products on a daily basis in 1996.

12 (c) USE OF CERTAIN DATA OR METHODOLOGY.—For
13 purposes of determining the percentages under para-
14 graphs (1) through (3) of subsections (a) and (b), the Sec-
15 retary shall use the data contained in the National High
16 School Drug Use Survey entitled Monitoring the Future
17 by the University of Michigan or such other comparable
18 index, as determined appropriate by the Secretary after
19 notice and an opportunity for a hearing, that utilizes
20 methodology identical to that used by the University of
21 Michigan in such survey.

22 **SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF**
23 **TOBACCO PRODUCTS.**

24 (a) ANNUAL DETERMINATION.—Not later than the
25 expiration of the 5-year period beginning on the date of

1 enactment of this Act, and annually thereafter, the Sec-
 2 retary shall determine the average annual incidence of the
 3 daily use of tobacco products by individuals who are under
 4 18 years of age.

5 (b) CIGARETTES.—With respect to cigarette prod-
 6 ucts, a determination under subsection (a) for a year shall
 7 be based on the percentage, as weighted by the relative
 8 population of the age groups involved as determined using
 9 data compiled in 1995 by the Bureau of the Census, of—

10 (1) 12th graders (individuals who are 16 or 17
 11 years of age) who used cigarette products on a daily
 12 basis during the year involved;

13 (2) 10th graders (individuals who are 14 or 15
 14 years of age) who used cigarette products on a daily
 15 basis during the year involved; and

16 (3) 8th graders (individuals who are 13 years
 17 of age) who used cigarette products on a daily basis
 18 during the year involved.

19 (c) SMOKELESS TOBACCO.—With respect to smoke-
 20 less tobacco products, a determination under subsection
 21 (a) for a year shall be based on the percentage, as weight-
 22 ed by the relative population of the age groups involved
 23 as determined using data compiled in 1995 by the Bureau
 24 of the Census, of—

1 (1) 12th graders (individuals who are 16 or 17
2 years of age) who used smokeless tobacco products
3 on a daily basis during the year involved;

4 (2) 10th graders (individuals who are 14 or 15
5 years of age) who used smokeless tobacco products
6 on a daily basis during the year involved; and

7 (3) 8th graders (individuals who are 13 years
8 of age) who used cigarette smokeless tobacco on a
9 daily basis during the year involved.

10 (d) USE OF CERTAIN DATA OR METHODOLOGY.—

11 (1) IN GENERAL.—For purposes of determining
12 the percentages under paragraphs (1) through (3) of
13 subsections (b) and (c), the Secretary shall use the
14 data contained in the National High School Drug
15 Use Survey entitled Monitoring the Future by the
16 University of Michigan (if such survey is still being
17 undertaken) or such other comparable index, as de-
18 termined appropriate by the Secretary after notice
19 and an opportunity for a hearing, that utilizes meth-
20 odology identical to that used by the University of
21 Michigan in such survey.

22 (2) ALTERATION OF METHODOLOGY.—If the
23 Secretary determines that the methodology used by
24 the University of Michigan in the survey referred to
25 in paragraph (1) has been altered in a material

1 manner from the methodology used during the pe-
 2 riod from 1986 to 1996 (including by altering States
 3 or regions on which the survey is based), the Sec-
 4 retary, after notice and an opportunity for a hear-
 5 ing, shall use percentages based on an index devel-
 6 oped by the Secretary that utilizes methodology
 7 identical to that used by the University of Michigan
 8 in such survey.

9 **SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO**
 10 **USE.**

11 (a) IN GENERAL.—For purposes of assessing sur-
 12 charges under section 205, the Secretary shall determine
 13 whether the required percentage reduction in the underage
 14 use of tobacco products for a year (based on the tables
 15 contained in subsection (b)) has been achieved for the year
 16 involved. Such determination shall be based on—

17 (1) with respect to cigarette products, the aver-
 18 age annual incidence of the daily use of tobacco
 19 products by individuals who are under 18 years of
 20 age for the year involved (as determined under sec-
 21 tion 203(b)) as compared to the underage use base
 22 percentage for cigarette products (as determined
 23 under section 202(a)); and

24 (2) with respect to smokeless tobacco products,
 25 the average annual incidence of the daily use of

1 smokeless tobacco products by individuals who are
 2 under 18 years of age for the year involved (as de-
 3 termined under section 203(c)) as compared to the
 4 underage use base percentage for smokeless tobacco
 5 products (as determined under section 202(b)).

6 (b) PERCENTAGE REDUCTION IN UNDERAGE USE OF
 7 TOBACCO PRODUCTS.—For purposes of subsection (a),
 8 the required percentage reduction in the underage use of
 9 tobacco products with respect to each tobacco product
 10 shall be determined according to the following tables:

11 (1) CIGARETTES.—

“Calender year after enact- ment—	The percentage decrease in the use of cigarette products—
Fifth	30
Sixth	30
Seventh	50
Eighth	50
Ninth	50
Tenth and thereafter	60.

12 (2) SMOKELESS TOBACCO PRODUCTS.—

“Calender year after enact- ment—	The percentage decrease in the use of smokeless tobacco products—
Fifth	25
Sixth	25
Seventh	35
Eighth	35
Ninth	35
Tenth and thereafter	45.

13 **SEC. 205. APPLICATION OF SURCHARGES.**

14 (a) IN GENERAL.—If the Secretary determines that
 15 the percentage reduction in the underage use of tobacco
 16 products for a year has not been achieved as required

1 under section 204, the Secretary shall impose a surcharge
2 on the manufacturers of the tobacco products involved.

3 (b) AMOUNT OF SURCHARGE.—

4 (1) IN GENERAL.—The amount of any sur-
5 charge to be imposed under this section for a cal-
6 endar year shall be equal to the product of—

7 (A) \$80,000,000; and

8 (B) the number of applicable surcharge
9 percentage points as determined under sub-
10 section (c).

11 (2) ADJUSTMENTS.—The amount applicable
12 under paragraph (1) shall be annually adjusted by
13 the Secretary based on—

14 (A) with respect to subparagraph (A) of
15 such paragraph—

16 (i) the proportional percentage in-
17 crease or decrease, as compared to cal-
18 endar year 1995, in the population of indi-
19 viduals residing in the United States who
20 are at least 13 years of age but less than
21 18 years of age;

22 (ii) the proportional percentage in-
23 crease or decrease, as compared to cal-
24 endar year 1996, in the average profit per
25 unit (measured in cents and weighted by

1 annual sales) earned by tobacco manufac-
2 turers for the tobacco product involved (as
3 determined by the Secretary through a
4 contract with a nationally recognized ac-
5 counting firm having no connection to to-
6 bacco manufacturers); and

7 (B) any methodology utilized to avoid the
8 double counting of underage individuals whose
9 tobacco use has previously resulted in the im-
10 position of a surcharge, limited to the extent that
11 there were not other underage users of tobacco
12 in such previous years for whom a surcharge
13 was not paid because of the limitation contained
14 in section 206.

15 (3) PROFIT PER UNIT.—For purposes of para-
16 graph (2)(A)(ii), the average profit per unit for cal-
17 endar 1996 shall be determined using the operating
18 profit reported by manufacturers to the Securities
19 and Exchange Commission.

20 (c) DETERMINATION OF APPLICABLE SURCHARGE
21 PERCENTAGE POINTS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), with respect to a calendar year, the appli-
24 cable surcharge percentage points shall be equal to
25 the percentage point difference between—

1 (A) the required percentage reduction in
2 the underage use of the tobacco product in-
3 volved for the year (based on the tables in sec-
4 tion 204(b)); and

5 (B) the number of percentage points by
6 which the average annual incidence of the daily
7 use of the tobacco products involved by individ-
8 uals who are under 18 years of age for the year
9 (as determined under section 203) is less than
10 the underage use base percentage for such
11 products (as determined under section 202).

12 (2) ADJUSTMENT.—If for any calendar year the
13 Secretary determines that the average annual inci-
14 dence of the daily use of the tobacco products in-
15 volved by individuals who are under 18 years of age
16 (as determined under section 203) is greater than
17 the underage use base percentage for such products
18 (as determined under section 202), the applicable
19 surcharge percentage point shall be equal to—

20 (A) the percentage point amount deter-
21 mined under paragraph (1)(A); and

22 (B) the number of percentage points by
23 which the average annual incidence of the daily
24 use of the tobacco products involved by individ-
25 uals who are under 18 years of age (as deter-

1 mined under section 203) is greater than the
2 underage use base percentage for such products
3 (as determined under section 202).

4 (3) TYPE OF PRODUCT.—Separate determina-
5 tions shall be made under this section for cigarette
6 products and smokeless tobacco products.

7 (d) LIMITATION.—The total amount of surcharges
8 imposed with respect to each type of tobacco product (cig-
9 arette products or smokeless tobacco products) under this
10 section shall not exceed \$2,000,000,000 (adjusted each
11 year by the Secretary to account for inflation) for any cal-
12 endar year.

13 (e) JOINT AND SEVERAL OBLIGATION.—Any sur-
14 charge imposed under this section with respect to a to-
15 bacco product (cigarette products or smokeless tobacco
16 products) shall be the joint and several obligation of all
17 manufacturers of such product as allocated by the market
18 share of each such manufacturer with respect to such
19 product. The market share of each manufacturer for each
20 such product shall be based on the actual Federal excise
21 tax payments made by such manufacturers for each such
22 product under the Internal Revenue Code of 1986.

23 (f) ASSESSMENT.—Not later than May 1 of each year
24 in which a surcharge will be imposed under this section,
25 the Secretary shall assess to each manufacturer the

1 amount for which such manufacturer is obligated. Not
2 later than July 1 of any year in which a manufacturer
3 receives an assessment under this section, the manufac-
4 turer shall pay such assessment in full or be subject to
5 such interest on such amount as the Secretary may by
6 regulation prescribe.

7 (g) USE OF AMOUNTS.—Amounts received under this
8 section shall be used as provided for in section 517.

9 (h) PROHIBITION.—No stay or other injunctive relief
10 may be granted by the Secretary or any court that has
11 the effect of enjoining the imposition and collection of the
12 surcharges to be applied under this section.

13 **SEC. 206. ABATEMENT PROCEDURES.**

14 (a) PETITIONS.—Upon payment by a manufacturer
15 of the amount assessed to the manufacturer under section
16 205(f), the manufacturer may submit a petition to the
17 Secretary for an abatement of the assessment. A notice
18 of such abatement petition shall be submitted to the attor-
19 ney general of each State.

20 (b) HEARING.—The Secretary shall provide for the
21 conduct of a hearing on an abatement petition received
22 under subsection (a) pursuant to the procedures described
23 in sections 554, 556, and 557 of title 5, United States
24 Code. The attorney general of any State shall be permitted

1 to be heard at any hearing conducted under this sub-
2 section.

3 (c) BURDEN.—The burden at any hearing under sub-
4 section (b) shall be on the manufacturer to prove, by a
5 preponderance of the evidence, that the manufacturer
6 should be granted the abatement.

7 (d) BASIS OF DECISION.—Any decision regarding a
8 petition for an abatement under this section shall be based
9 on a determination as to whether—

10 (1) the manufacturer has acted in good faith
11 and in full compliance with this Act (and any
12 amendment made by this Act) and any regulations
13 or State or local laws promulgated in furtherance of
14 this Act;

15 (2) the manufacturer has pursued all reason-
16 ably available measures to attain the reductions;

17 (3) there is any evidence of any direct or indi-
18 rect action by the manufacturer to undermine the
19 achievement of the reductions required under section
20 204 or to undermine any other provision of this Act
21 (or amendment); and

22 (4) the manufacturer has taken (or failed to
23 take) any other action as determined appropriate by
24 the Secretary.

1 (e) AMOUNT.—Upon a determination granting an
2 abatement under this section, the Secretary shall order the
3 abatement of not to exceed 75 percent of the amount paid
4 by the manufacturer, together with interest that may have
5 accrued on such amount during the period between the
6 date on which payment by the manufacturer was made
7 and the date on which the abatement order was granted.
8 Such interest shall be equal to that provided for the aver-
9 age 52-week Treasury Bill during the period involved.

10 (f) AGGRIEVED PARTIES.—Any manufacturer or at-
11 torney general of any State that is aggrieved by an abate-
12 ment that is granted under this section may seek judicial
13 review of the abatement decision within 30 days of the
14 date of such decision in the Court of Appeals for the Dis-
15 trict of Columbia Circuit. Review in such cases shall be
16 subject to the procedures described in sections 701
17 through 706 of title 5, United States Code.

18 (g) PROHIBITION.—A manufacturer may not file a
19 petition under subsection (a) until such time as the manu-
20 facturer has fully paid the Secretary the amount assessed
21 to the manufacturer under section 205(f).

1 **TITLE III—STANDARDS TO RE-**
2 **DUCE INVOLUNTARY EXPO-**
3 **SURE TO TOBACCO SMOKE**

4 **SEC. 301. DEFINITIONS.**

5 In this title—

6 (1) ADMINISTRATOR.—The term “Adminis-
7 trator” means the Administrator of the Occupational
8 Safety and Health Administration.

9 (2) PUBLIC FACILITY.—

10 (A) IN GENERAL.—The term “public facil-
11 ity” means any building regularly entered by 10
12 or more individuals at least 1 day per week, in-
13 cluding any such building owned by or leased to
14 a Federal, State, or local government entity.
15 Such term shall not include any building or
16 portion thereof regularly used for residential
17 purposes.

18 (B) EXCLUSIONS.—Such term does not in-
19 clude a building which is used as a restaurant
20 (other than a fast food restaurant), bar, private
21 club, hotel guest room, casino, bingo parlor, to-
22 bacco merchant, or prison.

23 (C) FAST FOOD RESTAURANT.—The term
24 “fast food restaurant” means any restaurant or
25 chain of restaurants that primarily distributes

1 food through a customer pick-up (either at a
 2 counter or drive-through window). The Admin-
 3 istrator of the Occupational Safety and Health
 4 Administration may promulgate regulations to
 5 clarify this subparagraph to ensure that the in-
 6 tended inclusion of establishments catering
 7 largely to individuals under 18 years of age is
 8 achieved.

9 (3) RESPONSIBLE ENTITY.—The term “respon-
 10 sible entity” means, with respect to any public facil-
 11 ity, the owner of such facility except that, in the
 12 case of any such facility or portion thereof which is
 13 leased, such term means the lessee.

14 **SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.**

15 (a) POLICY REQUIRED.—In order to protect children
 16 and adults from cancer, respiratory disease, heart disease,
 17 and other adverse health effects from breathing environ-
 18 mental tobacco smoke, the responsible entity for each pub-
 19 lic facility shall adopt and implement at such facility a
 20 smoke-free environment policy which meets the require-
 21 ments of subsection (b).

22 (b) ELEMENTS OF POLICY.—

23 (1) IN GENERAL.—Each smoke-free environ-
 24 ment policy for a public facility shall—

1 (A) prohibit the smoking of cigarettes, ci-
2 gars, and pipes, and any other combustion of
3 tobacco within the facility and on facility prop-
4 erty within the immediate vicinity of the en-
5 trance to the facility; and

6 (B) post a clear and prominent notice of
7 the smoking prohibition in appropriate and visi-
8 ble locations at the public facility.

9 (2) EXCEPTION.—The smoke-free environment
10 policy for a public facility may provide an exception
11 to the prohibition specified in paragraph (1) for 1 or
12 more specially designated smoking areas within a
13 public facility if such area or areas meet the require-
14 ments of subsection (c).

15 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
16 specially designated smoking area meets the requirements
17 of this subsection if—

18 (1) the area is ventilated in accordance with
19 specifications promulgated by the Administrator that
20 ensure that air from the area is directly exhausted
21 to the outside and does not recirculate or drift to
22 other areas within the public facility;

23 (2) the area is maintained at negative pressure,
24 as compared to adjoining nonsmoking areas, as deter-

1 mined under regulations promulgated by the Admin-
2 istrator; and

3 (3) nonsmoking individuals do not have to enter
4 the area for any purpose while smoking is occurring
5 in such area.

6 Cleaning and maintenance work shall be conducted in such
7 area only while no smoking is occurring in the area.

8 **SEC. 303. CITIZEN ACTIONS.**

9 (a) IN GENERAL.—An action may be brought to en-
10 force the requirements of this title by any aggrieved per-
11 son, any State or local government agency, or the Admin-
12 istrator.

13 (b) VENUE.—Any action to enforce this title may be
14 brought in any United States district court for the district
15 in which the defendant resides or is doing business to en-
16 join any violation of this title or to impose a civil penalty
17 for any such violation in the amount of not more than
18 \$5,000 per day of violation. The district courts shall have
19 jurisdiction, without regard to the amount in controversy
20 or the citizenship of the parties, to enforce this title and
21 to impose civil penalties under this title.

22 (c) NOTICE.—An aggrieved person shall give any al-
23 leged violator notice of at least 60 days prior to commene-
24 ing an action under this section. No action may be com-
25 menced by an aggrieved person under this section if such

1 alleged violator complies with the requirements of this title
2 within such 60-day period and thereafter.

3 (d) COSTS.—The court, in issuing any final order in
4 any action brought pursuant to this section, may award
5 costs of litigation (including reasonable attorney and ex-
6 pert witness fees) to any prevailing plaintiff, whenever the
7 court determines such award is appropriate.

8 (e) PENALTIES.—The court, in any action under this
9 section to apply civil penalties, shall have discretion to
10 order that such civil penalties be used for projects which
11 further the policies of this title. The court shall obtain the
12 view of the Administrator in exercising such discretion and
13 selecting any such projects.

14 **SEC. 304. PREEMPTION.**

15 Nothing in this title shall preempt or otherwise affect
16 any other Federal, State or local law which provides pro-
17 tection from health hazards from environmental tobacco
18 smoke.

19 **SEC. 305. REGULATIONS.**

20 The Administrator is authorized to promulgate such
21 regulations as the Administrator deems necessary to carry
22 out this title.

1 **SEC. 306. EFFECTIVE DATE.**

2 The provisions of this title shall take effect on the
3 date that is 1 year after the date of enactment of this
4 Act.

5 **TITLE IV—PUBLIC HEALTH AND**
6 **OTHER PROGRAMS**
7 **Subtitle A—Public Health Block**
8 **Grant Program**

9 **SEC. 401. PUBLIC HEALTH TRUST FUND.**

10 (a) ESTABLISHMENT.—

11 (1) IN GENERAL.—The Secretary shall estab-
12 lish, as a separate fund within the Trust Fund es-
13 tablished under section 401, a trust fund to be
14 known as the “Public Health Trust Fund”, consist-
15 ing of such amounts as may be appropriated or cred-
16 ited to the Trust Fund.

17 (2) TRUSTEES.—The trustees of the Trust
18 Fund shall be the Commissioner and the Secretary.

19 (b) TRANSFERS.—There are hereby appropriated and
20 transferred to the Trust Fund the amounts described in
21 section 401(d)(1) with respect to the year involved.

22 (c) EXPENDITURES FROM TRUST FUND.—Amounts
23 in the Public Health Trust Fund shall be available in each
24 calendar year, as provided by appropriations Act, for block
25 grants under section 502.

1 **SEC. 402. BLOCK GRANTS TO STATES.**

2 (a) IN GENERAL.—For the purpose described in sub-
3 section (b), the Secretary shall award a block grant to
4 each State in each fiscal year in an amount based on the
5 allotment of the State as determined in accordance with
6 section 503.

7 (b) AUTHORIZED ACTIVITIES.—A State shall use
8 amounts received under a block grant only for the purpose
9 of planning, carrying out, and evaluating activities as pro-
10 vided for in section 504.

11 (c) APPLICATION.—To be eligible to receive a grant
12 under this subtitle a State shall prepare and submit to
13 the Secretary an application at such time, in such manner,
14 and containing such information as the Secretary may re-
15 quire, including such assurances as the Secretary may re-
16 quire regarding the compliance of the State with the re-
17 quirements of this Act.

18 **SEC. 403. ALLOTMENTS.**

19 (a) IN GENERAL.—Of the amounts appropriated and
20 available for block grants for a fiscal year under section
21 502, the Secretary shall allot to each State an amount
22 determined under the allotment formula under subsection
23 (b).

24 (b) ALLOTMENT FORMULA.—

25 (c) REALLOTMENTS.—To the extent that all the
26 funds appropriated under section 501(c) for a fiscal year

1 and available for allotment in such fiscal year are not oth-
2 erwise allotted to States because—

3 (1) one or more States have not submitted an
4 application in accordance with section 502(c) for the
5 fiscal year; or

6 (2) one or more States have notified the Sec-
7 retary that they do not intend to use the full amount
8 of their allotment;

9 such excess shall be reallocated among each of the remain-
10 ing States in proportion to the amount otherwise allotted
11 to such States for the fiscal year without regard to this
12 subsection.

13 (d) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—

14 (1) IN GENERAL.—If the Secretary—

15 (A) receives a request from the governing
16 body of an Indian tribe or tribal organization
17 within any State that funds under this subtitle
18 be provided directly by the Secretary to such
19 tribe or organization; and

20 (B) determines that the members of such
21 tribe or tribal organization would be better
22 served by means of grants made directly by the
23 Secretary under this subtitle;

24 the Secretary shall reserve from amounts which
25 would otherwise be allotted to such State under sub-

1 section (a) for the fiscal year the amount determined
2 under paragraph (2).

3 (2) AMOUNT.—The Secretary shall reserve for
4 the purpose of paragraph (1) from amounts that
5 would otherwise be allotted to such State under sub-
6 section (a) an amount to be determined by a formula
7 developed by the Secretary after consultation with
8 the Secretary of the Interior.

9 (3) GRANT.—The amount reserved by the Sec-
10 retary on the basis of a determination under this
11 subsection shall be granted to the Indian tribe or
12 tribal organization serving the individuals for whom
13 such a determination has been made.

14 (4) PLAN.—In order for an Indian tribe or trib-
15 al organization to be eligible for a grant for a fiscal
16 year under this subsection, it shall submit to the
17 Secretary a plan for such fiscal year which meets
18 such criteria as the Secretary may prescribe.

19 (5) DEFINITIONS.—The terms “Indian tribe”
20 and “tribal organization” shall have the same mean-
21 ing given such terms in section 4(b) and section 4(c)
22 of the Indian Self-Determination and Education As-
23 sistance Act (25 U.S.C. 450b(b) and (c)).

1 **SEC. 404. USE OF FUNDS.**

2 (a) IN GENERAL.—Amounts provided to a State
3 under a grant under this subtitle shall be used—

4 (1) to reimburse the State for expenses in-
5 curred by the State under the State program under
6 title XIX of the Social Security Act (42 U.S.C. 1396
7 et seq.) relating to the treatment of tobacco-related
8 illnesses or conditions;

9 (2) to reimburse the State for other expenses
10 incurred by the State in providing directly, or reim-
11 bursing others for the provision of, treatment for to-
12 bacco-related illnesses or conditions;

13 (3) to provide health care coverage, either di-
14 rectly or through arrangements with other entities,
15 for uninsured individuals under 18 years of age who
16 reside in the State;

17 (4) to establish a State tobacco products liabil-
18 ity judgments and settlement fund, as provided for
19 in subsection (c);

20 (5) to reimburse the State for expenses in-
21 curred in carrying out the tobacco licensure require-
22 ments of subtitle D of title I; and

23 (6) to carry out any other activities determined
24 appropriate by the State.

1 (b) LIMITATIONS ON USES.—A State may not use
 2 amounts provided under a grant under this subtitle for
 3 programs or projects not approved of by the Secretary.

4 (c) JUDGMENT AND SETTLEMENT FUND.—

5 (1) IN GENERAL.—Each State that receives a
 6 grant under this subtitle shall establish a fund for
 7 the purpose of making payments under paragraph
 8 (2).

9 (2) PAYMENTS.—The fund established under
 10 paragraph (1) shall be used to make payments to in-
 11 dividuals who have obtained a judgment in a to-
 12 bacco-related action brought in a State court, or who
 13 have entered into a settlement of such an action, of
 14 the amount of any award under such judgment or
 15 settlement that represents punitive damages.

16 **SEC. 405. WITHHOLDING OF FUNDS.**

17 (a) AUTHORITY.—

18 (1) IN GENERAL.—The Secretary shall, after
 19 adequate notice and an opportunity for a hearing
 20 conducted within the affected State, withhold funds
 21 from any State which does not use its allotment in
 22 accordance with the requirements of this subtitle.
 23 The Secretary shall withhold such funds until the
 24 Secretary finds that the reason for the withholding

1 has been removed and there is reasonable assurance
2 that it will not recur.

3 (2) INVESTIGATION.—The Secretary may not
4 institute proceedings to withhold funds under para-
5 graph (1) unless the Secretary has conducted an in-
6 vestigation concerning whether the State has used
7 its allotment in accordance with the requirements of
8 this subtitle. Investigations required by this para-
9 graph shall be conducted within the affected State
10 by qualified investigators.

11 (3) RESPONSE TO COMPLAINTS.—The Secretary
12 shall respond in an expeditious manner to com-
13 plaints of a substantial or serious nature that a
14 State has failed to use funds in accordance with the
15 requirements of this subtitle.

16 (4) MINOR FAILURE.—The Secretary may not
17 withhold funds under paragraph (1) from a State
18 for a minor failure to comply with the requirements
19 of this subtitle.

20 (b) INVESTIGATIONS.—The Secretary shall conduct
21 in several States in each fiscal year investigations of the
22 use of funds received by the States under this subtitle in
23 order to evaluate compliance with the requirements of this
24 subtitle.

1 (c) AVAILABILITY OF INFORMATION.—Each State,
 2 and each entity which has received funds from an allot-
 3 ment made to a State under this subtitle, shall make avail-
 4 able to the Secretary, for examination, copying, or me-
 5 chanical reproduction on or off the premises, appropriate
 6 books, documents, papers, and records of the entity upon
 7 a reasonable request therefore.

8 **Subtitle B—Other Programs**

9 **SEC. 411. NATIONAL SMOKING CESSATION PROGRAM.**

10 (a) ESTABLISHMENT.—The Secretary shall establish
 11 a program to be known as the “National Smoking Ces-
 12 sation Program” under which the Secretary may award
 13 grants to eligible public and nonprofit entities and individ-
 14 uals for smoking cessation purposes.

15 (b) ELIGIBILITY.—

16 (1) OF ENTITIES.—To be eligible to receive a
 17 grant under this section an entity shall—

18 (A) be a public or nonprofit private entity;

19 (B) prepare and submit to the Secretary
 20 an application at such time, in such manner,
 21 and containing such information as the Sec-
 22 retary may require;

23 (C) provide assurances that amounts re-
 24 ceived under the grant will be used in accord-
 25 ance with subsection (c)(1); and

1 (D) meet any other requirements deter-
2 mined appropriate by the Secretary.

3 (2) OF INDIVIDUALS.—To be eligible to receive
4 a grant under this section an individual shall—

5 (A) prepare and submit to the Secretary
6 an application at such time, in such manner,
7 and containing such information as the Sec-
8 retary may require;

9 (B) provide assurances that amounts re-
10 ceived under the grant will be used only in ac-
11 cordance with subsection (c)(2); and

12 (C) meet any other requirements deter-
13 mined appropriate by the Secretary.

14 (c) USE OF FUNDS.—

15 (1) BY ENTITIES.—An entity that receives a
16 grant under this section shall use amounts provided
17 under the grant to establish or administer tobacco
18 product use cessation programs that are approved in
19 accordance with subsection (d).

20 (2) BY INDIVIDUALS.—An individual that re-
21 ceives a grant under this section shall use amounts
22 provided under the grant to enroll in a tobacco prod-
23 uct use cessation program or to purchase a tobacco
24 product cessation device that has been approved in
25 accordance with subsection (d). Grants to individuals

1 under this section may be in the form of vouchers
2 that may be used to pay the costs of enrollment in
3 an approved program or to purchase an approved
4 device.

5 (d) APPROVAL OF CESSATION PROGRAM OR DE-
6 VICES.—Using the best available scientific information,
7 the Secretary shall promulgate regulations to provide for
8 the approval of tobacco product use cessation programs
9 and devices. Such regulations shall be designed to ensure
10 that tobacco product users, if requested, are provided with
11 reasonable access to safe and effective cessation programs
12 and devices. Such regulations shall ensure that such indi-
13 viduals have access to a broad range of cessation options
14 that are tailored to the needs of the individual tobacco
15 user.

16 (e) FUNDING.—The Secretary shall use amounts
17 available under section 401(d)(2) to carry out this section.

18 **SEC. 412. NATIONAL REDUCTION IN TOBACCO USAGE PRO-**
19 **GRAM.**

20 (a) ESTABLISHMENT.—The Secretary shall establish
21 a program to be known as the “National Reduction in To-
22 bacco Usage Program” under which the Secretary may
23 award grants to eligible public and nonprofit entities to
24 carry out activities designed to reduce the use of tobacco
25 products.

1 (b) ELIGIBILITY.—To be eligible to receive a grant
2 under this section an entity shall—

3 (1) be a State health department, other public
4 entity, or a nonprofit private entity;

5 (2) prepare and submit to the Secretary an ap-
6 plication at such time, in such manner, and contain-
7 ing such information as the Secretary may require;

8 (3) provide assurances that amounts received
9 under the grant will be used in accordance with sub-
10 section (c); and

11 (4) meet any other requirements determined ap-
12 propriate by the Secretary.

13 (c) USE OF FUNDS.—An entity that receives a grant
14 under this section shall use amounts provided under the
15 grant to—

16 (1) carry out media-based and nonmedia-based
17 education, prevention, and cessation campaigns de-
18 signed to discourage the use of tobacco products by
19 individuals who are under 18 years of age and to en-
20 courage those who use such products to quit;

21 (2) carry out research concerning, and provide
22 for the development and public dissemination of,
23 technologies and methods to reduce the risk of de-
24 pendence and injury from tobacco product usage and
25 exposure;

1 (3) provide for the identification, testing, and
 2 evaluation of the health effects of both tobacco and
 3 non-tobacco constituents of tobacco products; or

4 (4) carry out any other activities determined by
 5 the Secretary to be consistent with the purposes of
 6 this Act.

7 (d) FUNDING.—The Secretary shall use amounts
 8 available under section 401(d)(3) to carry out this section.

9 **SEC. 413. NATIONAL TOBACCO-FREE PUBLIC EDUCATION**
 10 **PROGRAM.**

11 (a) ESTABLISHMENT OF BOARD.—

12 (1) IN GENERAL.—The Secretary shall establish
 13 an independent board to be known as the “Tobacco-
 14 Free Education Board” (referred to in this section
 15 as the “Board”) to enter into contracts with or
 16 award grants to eligible public and nonprofit private
 17 entities to carry out public informational and edu-
 18 cational activities designed to reduce the use of to-
 19 bacco products.

20 (2) APPOINTMENT.—The Board shall be com-
 21 posed of 9 members to be appointed by the Sec-
 22 retary, of which—

23 (A) at least 3 such members shall be an in-
 24 dividual who is widely recognized by the general
 25 public for achievement in the athletic, cultural,

1 entertainment, educational, business, or politi-
2 cal field; and

3 (B) at least 3 of whom shall be individuals
4 who are heads of a major public health organi-
5 zations.

6 (3) TERMS AND VACANCIES.—The members of
7 the Board shall serve staggered terms as determined
8 appropriate at the time of appointment by the Sec-
9 retary. Any vacancy in the Board shall not affect its
10 powers, but shall be filled in the same manner as the
11 original appointment.

12 (4) POWERS.—

13 (A) HEARINGS.—The Board may hold
14 such hearings, sit and act at such times and
15 places, take such testimony, and receive such
16 evidence as the Board considers advisable to
17 carry out the purposes of this section.

18 (B) INFORMATION FROM FEDERAL AGEN-
19 CIES.—The Board may secure directly from any
20 Federal department or agency such information
21 as the Board considers necessary to carry out
22 the provisions of this section.

23 (5) PERSONNEL MATTERS.—

24 (A) COMPENSATION.—Each member of the
25 Board who is not an officer or employee of the

1 Federal Government shall be compensated at a
2 rate equal to the daily equivalent of the annual
3 rate of basic pay prescribed for level IV of the
4 Executive Schedule under section 5315 of title
5 5, United States Code, for each day (including
6 travel time) during which such member is en-
7 gaged in the performance of the duties of the
8 Board. All members of the Board who are offi-
9 cers or employees of the United States shall
10 serve without compensation in addition to that
11 received for their services as officers or employ-
12 ees of the United States.

13 (B) TRAVEL EXPENSES.—The members of
14 the Board shall be allowed travel expenses, in-
15 cluding per diem in lieu of subsistence, at rates
16 authorized for employees of agencies under sub-
17 chapter I of chapter 57 of title 5, United States
18 Code, while away from their homes or regular
19 places of business in the performance of serv-
20 ices for the Board.

21 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
22 shall establish a program to be known as the “National
23 Tobacco-Free Public Education Program” under which
24 the Board may enter into contracts with or award grants
25 to eligible public and nonprofit private entities to carry

1 out public informational and educational activities de-
2 signed to reduce the use of tobacco products.

3 (c) ELIGIBILITY.—To be eligible to receive a grant
4 under this section an entity shall—

5 (1) be a—

6 (A) public entity or a State health depart-
7 ment; or

8 (B) nonprofit private entity that—

9 (i) is not affiliated with a tobacco
10 product manufacturer or importer;

11 (ii) has a demonstrated record of
12 working effectively to reduce tobacco prod-
13 uct use; and

14 (iii) has expertise in conducting a
15 multi-media communications campaign;

16 (2) prepare and submit to the Secretary an ap-
17 plication at such time, in such manner, and contain-
18 ing such information as the Secretary may require,
19 including a description of the activities to be con-
20 ducted using amounts received under the grant or
21 contract;

22 (3) provide assurances that amounts received
23 under the grant will be used in accordance with sub-
24 section (d); and

1 (4) meet any other requirements determined ap-
2 propriate by the Secretary.

3 (d) USE OF FUNDS.—An entity that receives a grant
4 or contract under this section shall use amounts provided
5 under the grant or contract to conduct multi-media public
6 educational or informational campaigns that are designed
7 to discourage and de-glamorize the use of tobacco prod-
8 ucts. Such campaigns shall be designed to discourage the
9 initiation of tobacco use by minors and encourage those
10 using such products to quit.

11 (e) NEEDS OF CERTAIN POPULATIONS.—In awarding
12 grants and contracts under this section, the Board shall
13 take into consideration the needs of particular popu-
14 lations.

15 (f) FUNDING.—The Secretary shall use amounts
16 available under section 401(d)(4) to carry out this section.

17 **SEC. 414. NATIONAL EVENT SPONSORSHIP PROGRAM.**

18 (a) ESTABLISHMENT.—The Secretary shall establish
19 a program to be known as the “National Event Sponsor-
20 ship Program” under which the Secretary may award
21 grants to eligible entities or individuals for the sponsorship
22 of activities described in subsection (c).

23 (b) ELIGIBILITY.—To be eligible to receive a grant
24 under this section an entity or individual shall—

1 (1) prepare and submit to the Secretary an ap-
 2 plication at such time, in such manner, and contain-
 3 ing such information as the Secretary may require,
 4 including—

5 (A) a description of the event, activity,
 6 team, or entry for which the grant is to be pro-
 7 vided;

8 (B) documentation that the event, activity,
 9 team, or entry involved was sponsored or other-
 10 wise funded by a tobacco manufacturer or dis-
 11 tributor prior to the date of the application; and

12 (C) a certification that the applicant is un-
 13 able to secure funding for the event, activity,
 14 team, or entry involved from sources other than
 15 those described in paragraph (2);

16 (2) provide assurances that amounts received
 17 under the grant will be used in accordance with sub-
 18 section (d); and

19 (3) meet any other requirements determined ap-
 20 propriate by the Secretary.

21 (c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—
 22 Events, activities, teams, or entries for which a grant may
 23 be provided under this section include—

24 (1) an athletic, musical, artistic, or other social
 25 or cultural event or activity that was sponsored in

1 whole or in part by a tobacco manufacturer or dis-
2 tributor prior to the date of enactment of this Act;

3 (2) the participation of a team that was spon-
4 sored in whole or in part by a tobacco manufacturer
5 or distributor prior to the date of enactment of this
6 Act, in an athletic event or activity; and

7 (3) the payment of a portion or all of the entry
8 fees of, or other financial or technical support pro-
9 vided to, an individual or team by a tobacco manu-
10 facturer or distributor prior to the date of enactment
11 of this Act, for participation of the individual in an
12 athletic, musical, artistic, or other social or cultural
13 event.

14 (d) USE OF FUNDS.—Amounts received under a
15 grant under this section shall be used to—

16 (1)(A) pay the costs associated with the spon-
17 sorship of an event or activity described in sub-
18 section (c)(1);

19 (B) provide for the sponsorship of an individual
20 or team;

21 (C) pay the required entry fees associated with
22 the participation of an individual or team in an
23 event or activity described in subsection (c)(3);

24 (D) provide financial or technical support to an
25 individual or team in connection with the participa-

1 tion of that individual or team in an activity de-
2 scribed in subsection (c)(3); or

3 (E) for any other purposes determined appro-
4 prium by the Secretary; and

5 (2) promote images or activities to discourage
6 individuals from using tobacco products or encour-
7 age individuals who use such products to quit.

8 (e) ALLOCATION OF UNEXPENDED FUNDS.—
9 Amounts available for purposes of carrying out this sec-
10 tion and remaining available at the end of the 10-year pe-
11 riod described in section 401(d)(5), shall be used as fol-
12 lows:

13 (1) 50 percent of such amounts shall be used
14 to supplement amounts available for multi-media
15 campaigns under section 512;

16 (2) 25 percent of such amounts shall be used
17 to supplement amounts available for enforcement
18 purposes under section 401(d)(8); and

19 (3) 25 percent of such amounts shall be used
20 to supplement amounts available for community ac-
21 tion programs under section 515.

22 (f) FUNDING.—The Secretary shall use amounts
23 available under section 401(d)(5) to carry out this section.

1 **SEC. 415. NATIONAL COMMUNITY ACTION PROGRAM.**

2 (a) ESTABLISHMENT.—The Secretary shall establish
 3 a program to be known as the “National Community Ac-
 4 tion Program” under which the Secretary may award
 5 grants to eligible State and local governmental entities to
 6 carry out community-based tobacco control efforts that
 7 are designed to encourage community involvement in re-
 8 ducing tobacco product use.

9 (b) ELIGIBILITY.—To be eligible to receive a grant
 10 under this section an entity shall—

11 (1) be a State or local public entity;

12 (2) prepare and submit to the Secretary an ap-
 13 plication at such time, in such manner, and contain-
 14 ing such information as the Secretary may require;

15 (3) provide assurances that amounts received
 16 under the grant will be used in accordance with the
 17 purposes of this section; and

18 (4) meet any other requirements determined ap-
 19 propriate by the Secretary.

20 (c) FUNDING.—The Secretary shall use amounts
 21 available under section 401(d)(6) to carry out this section.

22 **SEC. 416. NATIONAL CESSATION RESEARCH PROGRAM.**

23 (a) ESTABLISHMENT.—The Secretary shall establish
 24 a program to be known as the “National Cessation Re-
 25 search Program” under which the Secretary may award
 26 grants to eligible entities for research concerning, and the

1 development of methods, drugs, and devices to discourage
 2 individuals from using tobacco products and to assist indi-
 3 viduals who use such products in quitting such use.

4 (b) ELIGIBILITY.—

5 (c) USE OF FUNDS.—

6 (d) ADDITIONAL REQUIREMENTS.—

7 (e) FUNDING.—The Secretary shall use amounts
 8 available under section 401(d)(7) to carry out this section.

9 **SEC. 417. USE OF SURCHARGE PAYMENTS.**

10 (a) IN GENERAL.—Of the amount made available to
 11 the Secretary each year under section 401(d)(9), the Sec-
 12 retary shall—

13 (1) use not less than 90 percent of such amount
 14 to award grants to State and local governmental and
 15 public health agencies to carry out activities to fur-
 16 ther reduce the use of tobacco products by individ-
 17 uals who are under 18 years of age; and

18 (2) use not more than 10 percent of such
 19 amount for the administrative costs associated with
 20 the administration of title II and of chapter IX of
 21 the Federal Food, Drug and Cosmetic Act (as added
 22 by section 143(3)).

23 (b) TRANSFER OF CERTAIN AMOUNTS.—If the Sec-
 24 retary determines that the administrative costs described

1 in subsection (a)(2) are less than the amount available
2 under section subsection, the Secretary may—

3 (1) transfer any such excess amount to other
4 Federal, State, or local agencies to meet the needs
5 associated with the reduction of underage tobacco
6 usage; or

7 (2) expend such amounts directly for activities
8 to expedite the reduction of underage tobacco use.

9 (c) ELIGIBILITY.—To be eligible to receive a grant
10 under this section an entity shall—

11 (1) be a State or local governmental or public
12 health agency;

13 (2) prepare and submit to the Secretary an ap-
14 plication at such time, in such manner, and contain-
15 ing such information as the Secretary may require;

16 (3) provide assurances that amounts received
17 under the grant will be used in accordance with this
18 section; and

19 (4) meet any other requirements determined ap-
20 propriate by the Secretary.

21 (d) FUNDING.—The Secretary shall use amounts
22 available under section 401(d)(9) to carry out this section.

1 **TITLE V—CONSENT DECREES,**
2 **NON-PARTICIPATING MANU-**
3 **FACTURERS, AND STATE EN-**
4 **FORCEMENT**

5 **SEC. 501. PURPOSES.**

6 It is the purpose of this title to provide for the estab-
7 lishment of consent decrees and the imposition of certain
8 payment provisions, in addition to those otherwise pro-
9 vided for under Federal or State laws, to encourage manu-
10 facturers, distributors, and retailers to comply with this
11 Act, and to otherwise provide for the enforcement of this
12 Act with respect to non-participating manufacturers.

13 **Subtitle A—Consent Decrees and**
14 **Non-Participating Manufacturers**

15 **SEC. 511. CONSENT DECREES.**

16 (a) REQUIREMENT.—To be eligible to receive pay-
17 ments under title V, a State, and to be eligible to receive
18 liability protections under title VII, a tobacco manufac-
19 turer or distributor, shall enter into consent decrees under
20 this section to be effective on the date of enactment of
21 this Act.

22 (b) TERMS AND CONDITIONS.—

23 (1) IN GENERAL.—The terms and conditions
24 contained in the consent decrees described in sub-
25 section (a) shall contain provisions to clarify the ap-

1 plication and requirements of this Act (and the
2 amendments made by this Act), including provisions
3 relating to—

4 (A) restrictions on tobacco product adver-
5 tising and marketing and youth access to such
6 products;

7 (B) the termination, establishment, and
8 operation of trade associations;

9 (C) restrictions on tobacco lobbying;

10 (D) the disclosure of tobacco smoke con-
11 stituents;

12 (E) the disclosure of nontobacco ingredi-
13 ents found in tobacco products;

14 (F) the disclosure of existing and future
15 documents relating to health, toxicity, and addi-
16 tion related to tobacco product usage;

17 (G) compliance and corporate culture;

18 (H) the obligation of manufacturers to
19 make payments for the benefit of States;

20 (I) the obligation of manufacturers to
21 interact only with distributors and retailers that
22 operate in compliance with the applicable provi-
23 sions of Federal, State, or local law regarding
24 the marketing and sale of tobacco products;

1 (J) requirements for warnings, labeling,
2 and packaging of tobacco products;

3 (K) the dismissal of pending litigation as
4 required under title VII and as agreed to by the
5 parties to the decree; and

6 (L) any other matter determined appro-
7 priate by the Secretary or the parties involved.

8 (2) LIMITATIONS.—The terms and conditions
9 contained in the consent decrees described in sub-
10 section (a) shall not contain provisions relating to—

11 (A) tobacco product design, performance,
12 or modification;

13 (B) manufacturing standards and good
14 manufacturing practices;

15 (C) testing and regulation with respect to
16 toxicity and ingredients approval; and

17 (D) the required percentage reductions in
18 the underage use of tobacco products for a year
19 under section 204.

20 (3) WAIVER OF CONSTITUTIONAL CLAIMS.—The
21 terms and conditions contained in the consent de-
22 crees described in subsection (a) shall include a pro-
23 vision waiving the Federal or State constitutional
24 claims of the parties and providing for the severabil-
25 ity of the provisions of the decree.

1 (4) CONSTRUCTION.—The terms and conditions
2 contained in the consent decrees described in sub-
3 section (a) shall provide that the terms of the decree
4 will be construed in a manner that is consistent with
5 the provision of this Act.

6 (c) APPROVAL.—To be valid under this section, the
7 provisions of a consent decree must be approved by the
8 Secretary prior to approval or entry by a court.

9 (d) ENFORCEMENT.—

10 (1) CHANGES IN LAW.—The provisions of a
11 consent decree entered under this section shall re-
12 main in effect and enforceable regardless of whether
13 the provisions of this Act are amended, except that
14 any amendments to this Act that—

15 (A) establish Federal requirements that
16 are in conflict with obligations contained in the
17 consent decrees shall render such obligations
18 unenforceable;

19 (B) require allocations of funds that are in
20 conflict with the allocation contained in the con-
21 sent decrees shall render such consent decree
22 allocation unenforceable; and

23 (C) require warnings, labeling, or packag-
24 ing that conflicts with the warning, labeling, or
25 packaging requirements of the consent decree,

1 shall require that modifications be made in the
 2 consent decree to conform with such amend-
 3 ments.

4 (2) BY STATE.—

5 (A) IN GENERAL.—A State may bring an
 6 action to enforce the provisions of any consent
 7 decree under this section in any appropriate
 8 State court. Such proceedings may seek injunc-
 9 tive relief only and may not seek criminal or
 10 monetary sanctions. Enforcement of any injunc-
 11 tive relief provided under a State action under
 12 this section shall be permitted under any appli-
 13 cable State law.

14 (B) CONSISTENCY.—The Secretary, in con-
 15 sultation with the Attorney General, shall pro-
 16 mulgate regulations to ensure the consistency of
 17 State court ruling with respect to conduct
 18 under a consent decree that is not exclusively
 19 local in nature.

20 **SEC. 512. NATIONAL TOBACCO CONTROL PROTOCOL.**

21 (a) REQUIREMENT.—Not later than 6 months after
 22 the date of enactment of this Act, each tobacco manufac-
 23 turer to which this Act applies shall enter into a National
 24 Tobacco Control Protocol.

1 (b) TERMS AND CONDITIONS.—The Protocol referred
2 to in subsection (a) shall be—

3 (1) developed by the Secretary as a binding and
4 enforceable contract that embodies the terms of this
5 Act; and

6 (2) designed to be enforceable in Federal or
7 State courts.

8 **SEC. 513. NON-PARTICIPATING MANUFACTURERS.**

9 (a) IN GENERAL.—With respect to a manufacturer
10 that elects not to enter into a consent decree under section
11 602, such manufacturer shall not be eligible to receive the
12 liability protections under title VII.

13 (b) IMPOSITION OF USER FEE.—

14 (1) IN GENERAL.—Each manufacturer that
15 elects not to enter into a consent decree under sec-
16 tion 602 and not to become a signatory to the Na-
17 tional Tobacco Control Protocol under section 603
18 shall be subject to an annual fee established under
19 this subsection.

20 (2) AMOUNT OF FEE.—

21 (A) TOTAL.—The total amount of all fees
22 established under this subsection for a year
23 shall be equal to the amounts provided under
24 paragraphs (1) and (8) of section 401(d) for
25 the year.

1 (B) PER MANUFACTURER.—The Secretary
2 shall promulgate regulations for the purpose of
3 assessing fees under this subsection and deter-
4 mining the amount of the fee to be assessed to
5 each manufacturer.

6 (c) SETTLEMENT RESERVE FUND.—

7 (1) IN GENERAL.—Each manufacturer to which
8 subsection (b)(1) applies shall annually deposit into
9 an escrowed reserve fund an amount equal to 150
10 percent of the amount that such manufacturer would
11 have paid under section 402 (except for that portion
12 of the payments that would have been made avail-
13 able under paragraphs (1) and (8) of section 401(d))
14 for the year in which the manufacturer is making
15 such deposit if the manufacturer had been a signa-
16 tory to the National Tobacco Control Protocol under
17 section 603.

18 (2) USE.—Amounts contained in the reserve
19 fund of a manufacturer under paragraph (1) shall
20 be used solely for tobacco-related liability payments.
21 The manufacturer may reclaim any amounts remain-
22 ing in the fund (with interest) at the end of the 35-
23 year period beginning on the date on which such
24 fund is established.

1 **Subtitle B—State Enforcement**

2 **SEC. 521. REQUIREMENT OF NO SALE TO MINORS LAW.**

3 (a) RELEVANT LAW.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 for each calendar year, the Secretary may not make
6 any payments to a State under section 403 unless
7 the State involved has in effect a law providing that
8 it is unlawful for any manufacturer, retailer, or dis-
9 tributor of tobacco products to sell or distribute any
10 such product to any individual under the age of 18
11 that meets the requirements of this section.

12 (2) DELAYED APPLICABILITY FOR CERTAIN
13 STATES.—In the case of a State whose legislature
14 does not convene a regular session in fiscal year
15 1997, and in the case of a State whose legislature
16 does not convene a regular session in fiscal year
17 1998, the requirement described in paragraph (1) as
18 a condition of a receipt of payments under section
19 403 shall apply only for fiscal year 1999 and subse-
20 quent fiscal years.

21 (b) REQUIREMENTS.—A State law described in sub-
22 section (a) shall comply with the following:

23 (1) PROHIBITION ON SALE.—Such law shall
24 provide that it is unlawful for any manufacturer, re-
25 tailer, or distributor of tobacco products to sell or

1 distribute any such product within the State to any
2 individual under the age of 18 years.

3 (2) PURCHASE, RECEIPT OR POSSESSION.—

4 (A) IN GENERAL.—Such law shall provide
5 that an individual under 18 years of age shall
6 not purchase or attempt to purchase, receive or
7 attempt to receive, possess or attempt to pos-
8 sess, smoke or attempt to smoke, or otherwise
9 use or consume or attempt to use or consume
10 a tobacco product in a public place.

11 (B) EMPLOYMENT.—Such law may permit
12 an individual under the age of 18 to possess a
13 tobacco product during regular working hours
14 and in the course of such individual's employ-
15 ment if the tobacco product is not possessed for
16 such individual's consumption.

17 (3) INSPECTIONS.—

18 (A) IN GENERAL.—Such law shall provide
19 that the State Police of a State, or such local
20 law enforcement authority duly designated by
21 the State Police, shall enforce this law in a
22 manner that can reasonably be expected to re-
23 duce the extent to which tobacco products are
24 distributed to individuals under 18 years of age
25 and shall, at least monthly, conduct random,

1 unannounced inspections in accordance with
2 regulations promulgated by the Secretary under
3 this section to ensure compliance with this law.

4 (B) CONDUCT.—Inspections under this
5 paragraph shall be conducted in communities
6 geographically and statistically representative of
7 the entire State and the youth population of the
8 State. Not less than 250 such inspections shall
9 be conducted with respect to each 1,000,000
10 residents of the State.

11 **SEC. 522. STATE REPORTING.**

12 (a) IN GENERAL.—Not later than 2 years after the
13 date of enactment of this Act, and annually thereafter,
14 the State shall prepare and submit to the Secretary a re-
15 duction in tobacco product usage report. Such report shall,
16 except as provided in subsection (b)(3), be made available
17 to the general public of the State.

18 (b) CONTENTS.—A report submitted under sub-
19 section (a) shall include—

20 (1) a detailed description of the enforcement ac-
21 tivities undertaken by the State and the political
22 subdivisions of the State concerning tobacco product
23 usage laws for the year for which the report is being
24 prepared;

1 (2) a detailed description of the progress of the
2 State in reducing the availability of tobacco products
3 to individuals under 18 years of age, including the
4 detailed statistical results of the compliance inspection
5 required under section 621;

6 (3) a detailed description of the methods used
7 in such compliance inspection and in identifying outlets
8 which were tested (the Secretary shall provide
9 protections for the confidentiality of information
10 provided under this paragraph);

11 (4) a detailed description of the strategies that
12 the State intends to utilize in the current and succeeding
13 years to make further progress on reducing
14 the availability of tobacco products to individuals
15 under 18 years of age; and

16 (5) the identity of a single State agency that is
17 responsible for administering the requirements of
18 title III in the State.

19 **SEC. 523. REDUCTION IN STATE PAYMENTS.**

20 (a) **ANNUAL DETERMINATION.**—Beginning with re-
21 spect to the fifth full fiscal year after the date of enact-
22 ment of this Act, and each fiscal year thereafter the Sec-
23 retary shall make a determination as to whether each
24 State has pursued all reasonably available measures to en-
25 force the law described in section 621.

1 (b) PRESUMPTIVE FINDING.—The Secretary shall
2 find presumptively that a State has not pursued all rea-
3 sonably available measures to enforce the law described
4 in section 621 if the Secretary determines that the State
5 has not achieved the following compliance rate results
6 based on the findings of the retail compliance inspections
7 conducted under the State law:

8 (1) With respect to each of the fifth and sixth
9 fiscal years following the date of enactment, 75 per-
10 cent compliance with State law.

11 (2) With respect to each of the seventh through
12 ninth fiscal years following the date of enactment,
13 85 percent compliance with State law.

14 (3) With respect to the tenth and each subse-
15 quent fiscal year following the date of enactment, 90
16 percent compliance with State law.

17 (c) AMOUNT OF REDUCTION.—

18 (1) IN GENERAL.—With respect to a State that
19 the Secretary determines does not meet the compli-
20 ance rates described in subsection (b), the Secretary
21 may reduce the amount that the State may be eligi-
22 ble for under section 501. The amount of any such
23 reduction shall not exceed an amount equal to 1 per-
24 cent of the amount for which the State is eligible for
25 under section 501 for the fiscal year involved for

1 each 1 percentage point by which the State's compli-
 2 ance performance is below the applicable compliance
 3 rate.

4 (2) LIMITATION.—In no event shall the amount
 5 of any reduction under this section exceed an
 6 amount equal to 20 percent of the amount for which
 7 the State is eligible for under section 501 for the
 8 fiscal year involved.

9 (3) REALLOTMENT.—The Secretary shall
 10 reallocate any amounts withheld under this subsection
 11 to States with compliance rates that exceed the rates
 12 applicable under subsection (b) in amounts to be de-
 13 termined by the Secretary as appropriate to reward
 14 States with the highest compliance rates.

15 (d) REVIEW.—

16 (1) PETITION FOR RELEASE.—Not later than
 17 90 days after the date on which a notice from the
 18 Secretary that the Secretary intends to make a re-
 19 duction under subsection (c) is received, a State may
 20 petition the Secretary for a release and disburse-
 21 ment of such amount (referred to in this subsection
 22 as the “withhold amount”). The State shall give
 23 prompt written notice of such petition to the State
 24 attorney general.

25 (2) ACTION BY SECRETARY.—

1 (A) HOLDING AND INVESTING OF
2 FUNDS.—Upon receipt of a petition under para-
3 graph (1), the Secretary shall designate the
4 withhold amount as subject to a petition and in-
5 vest such amount in interest-bearing securities
6 of the United States subject to a final disposi-
7 tion of the petition.

8 (B) BASIS FOR DETERMINATION.—In con-
9 sidering a petition received under paragraph
10 (1), the Secretary shall consider—

11 (i) whether the State has acted in
12 good faith and in full compliance with the
13 provisions of this Act (and the amend-
14 ments made by this Act) and any regula-
15 tions promulgated in furtherance of this
16 Act;

17 (ii) whether the State has pursued all
18 reasonably available measures to achieve
19 the compliance rates applicable under sub-
20 section (b) and the goals of this Act for re-
21 ducing the underage use of tobacco prod-
22 ucts;

23 (iii) whether there is any evidence of
24 any direct or indirect action taken by the
25 State to undermine the achievement of the

1 compliance rates and goals described in
2 clause (ii); and

3 (iv) any other evidence determined ap-
4 propriate by the Secretary.

5 (C) BURDEN.—With respect to any action
6 by the Secretary on a petition under paragraph
7 (1), the burden shall be on the State to prove,
8 by a preponderance of the evidence, that the
9 State should be granted a release and disburse-
10 ment under the petition.

11 (D) HEARING.—The Secretary shall hold a
12 hearing, with notice and an opportunity to be
13 heard provided to the attorney general of the
14 State and to manufacturers, prior to making
15 any determination as to a petition under para-
16 graph (1).

17 (E) RELEASE OF FUNDS.—Upon a deter-
18 mination by the Secretary that the State has
19 met the burden imposed under subparagraph
20 (C) with respect to a petition, the Secretary
21 shall disburse not to exceed 75 percent of the
22 withhold amount (and any interest accrued on
23 such amount) to the State. The Secretary may
24 consider all relevant evidence in determining the

1 amount to disburse to the State under this sub-
2 paragraph.

3 (3) APPEALS.—

4 (A) IN GENERAL.—Any manufacturer or
5 State attorney general aggrieved by a decision
6 of the Secretary under paragraph (2) may,
7 within 30 days of the date of such decision,
8 seek judicial review of the decision in the Unit-
9 ed States Court of Appeals for the District of
10 Columbia Circuit. The provisions of sections
11 701 through 706 of title 5, United States Code,
12 shall apply to appeals filed under this para-
13 graph.

14 (B) LIMITATION.—No stay or other in-
15 junctive relief that has the effect of enjoining
16 the withholding of amounts under this section
17 shall be permitted during the pendency of an
18 appeal filed under this paragraph.

19 (C) FINALITY.—The decision of the Court
20 of Appeals in an action under this paragraph
21 shall be final.

1 **TITLE VI—PROVISIONS RELAT-**
2 **ING TO TOBACCO-RELATED**
3 **CIVIL ACTIONS**

4 **SEC. 601. GENERAL IMMUNITY.**

5 (a) STATE ATTORNEY GENERAL ACTIONS.—

6 (1) PENDING ACTIONS.—Civil actions that have
7 been commenced by a State or local governmental
8 entity, or on behalf of such an entity, against a
9 manufacturer, distributor, or retailer that is a signa-
10 tory to the National Tobacco Control Protocol under
11 section 612, and that are pending on the date of
12 enactment of this Act are terminated.

13 (2) FUTURE ACTIONS.—A manufacturer, dis-
14 tributor or retailer that is a signatory to the Na-
15 tional Tobacco Control Protocol under section 612
16 shall be immune from any civil action commenced
17 after the date of enactment of this Act by a Federal,
18 State, or local governmental entity, or on behalf of
19 such an entity, for all claims arising from the use
20 of a tobacco product.

21 (b) OTHER ACTIONS.—

22 (1) CLASS ACTIONS.—

23 (A) PENDING ACTIONS.—Class actions for
24 claims arising from the use of a tobacco prod-
25 uct that are pending against a manufacturer,

1 distributor, or retailer that is a signatory to the
2 National Tobacco Control Protocol under sec-
3 tion 612, are terminated.

4 (B) FUTURE ACTIONS.—A manufacturer,
5 distributor, or retailer that is a signatory to the
6 National Tobacco Control Protocol under sec-
7 tion 612 shall be immune from any class action
8 commenced after the date of enactment of this
9 Act for all claims arising from the use of a to-
10 bacco product.

11 (2) ADDICTION AND DEPENDENCE CLAIMS.—

12 (A) PENDING ACTIONS.—Any civil action
13 for claims based on addition to or dependence
14 on a tobacco product that are pending against
15 a manufacturer, distributor, or retailer that is
16 a signatory to the National Tobacco Control
17 Protocol under section 612, are terminated.

18 (B) FUTURE ACTIONS.—A manufacturer,
19 distributor, or retailer that is a signatory to the
20 National Tobacco Control Protocol under sec-
21 tion 612 shall be immune from any civil action
22 commenced after the date of enactment of this
23 Act for all claims based on addition to or de-
24 pendence on a tobacco product.

1 (c) PRESERVATION.—All personal injury claims arising from the use of a tobacco product by an individual shall be preserved.

4 **SEC. 602. CIVIL LIABILITY FOR PAST CONDUCT.**

5 (a) APPLICATION.—The provisions of this section shall apply to all civil actions permitted under section 701 for relief arising from the conduct of a manufacturer, distributor, or retailer that is a signatory to the National Tobacco Control Protocol under section 612 that occurred prior to the date of enactment of this Act.

11 (b) PUNITIVE DAMAGES PROHIBITED.—No punitive damages shall be awarded in any claim described in subsection (a).

14 (c) INDIVIDUAL TRIALS.—No class action suits, joinder of parties, aggregation of claims, consolidation of actions, extrapolations, or other devices to resolve cases other than on the basis of individual actions shall be permitted without the consent of the defendant. Any defendant, in an action that involves a violation of this subsection, may remove such action to an appropriate Federal court.

22 (d) JOINT SHARING AGREEMENT.—As part of the National Tobacco Control Protocol under section 612, all signatories shall agree to the joint sharing of any civil liability for actions for damages arising from the use of to-

1 bacco products. Such signatories shall not be jointly and
2 severally liable for damages involving nonsignatories. Ac-
3 tions involving both signatories and nonsignatories shall
4 be severed.

5 (e) PERMISSIBLE PARTIES.—

6 (1) PLAINTIFFS.—The following individuals
7 may be plaintiffs in a civil action to which this sec-
8 tion applies:

9 (A) Individuals bringing claims, or claims
10 derivative of such claims, on their own behalf
11 for a tobacco-related injury, or the heirs of such
12 individuals.

13 (B) Third-party payors for claims not
14 based on subrogation that were pending on
15 June 9, 1997.

16 (C) Third-party payors for claims based on
17 subrogation of individual claims permitted
18 under subparagraph (A).

19 (2) DEFENDANTS.—This section shall apply
20 only to actions brought against a signatory of the
21 National Tobacco Control Protocol under section
22 612, a successor or assign of such a signatory, any
23 future fraudulent transferees, or any entity for suit
24 designated to survive a defunct signatory. Such sig-

1 natories shall be vicariously liable for the actions of
2 their agents.

3 (f) REMOVAL.—Except as provided in subsection (c),
4 there shall be no removal of a action to which this section
5 applies.

6 (g) DISCOVERY.—The development, after the date of
7 enactment of this Act, of any tobacco product that reduces
8 the risk of injury or illness to a user shall not be admissi-
9 ble or discoverable.

10 (h) CAPS ON SETTLEMENTS.—

11 (1) AGGREGATE ANNUAL CAP.—With respect to
12 a calendar year, the aggregate amount of all tobacco
13 claims judgments or settlements to which this sec-
14 tion applies, that the signatories of the National To-
15 bacco Control Protocol under section 612 shall be
16 required to pay, shall not exceed an amount equal to
17 33 percent of the annual payment required under
18 section 402 for the year involved.

19 (2) PAYMENT OF EXCESS.—If the amount of
20 the judgments and settlements described in para-
21 graph (1) exceed an amount equal to 33 percent of
22 the annual payment required under section 402 for
23 the year involved, such excess amount shall be paid
24 in the following year.

1 (3) EFFECT OF SETTLEMENT.—The signatories
2 described in paragraph (1) shall receive a credit, to
3 be applied against the amount owed by such signato-
4 ries to the National Tobacco Settlement Trust Fund
5 for the year involved, in an amount equal to 80 per-
6 cent of the aggregate amounts paid under judgments
7 or settlements of tobacco-related claims to which this
8 section applies for such year.

9 (4) INDIVIDUAL CAP.—With respect to an ac-
10 tion to which this section applies, any amount
11 awarded in excess of \$1,000,000 may be paid in the
12 year following the year in which the judgment or
13 settlement was entered, except that this paragraph
14 shall not apply if all other awards under judgments
15 or settlements entered in the first year can be paid
16 without exceeding the aggregate annual cap under
17 paragraph (1). Such excess amount shall carry over
18 from year to year with no payments in any single
19 year exceeding \$1,000,000 and no interest accruing
20 on such amounts until such time as the annual ag-
21 gregate cap is not exceeded.

22 (5) UNUSED PORTION OF CREDIT.—

23 (i) DEFENSE COSTS.—The signatories of the Na-
24 tional Tobacco Control Protocol under section 612 shall
25 be responsible for the payment of all attorneys' fees and

1 other costs associated with being a defendant in an action
2 to which this section applies.

3 **SEC. 603. CIVIL LIABILITY FOR FUTURE CONDUCT.**

4 (a) APPLICATION.—The provisions of this section
5 shall apply to all civil actions permitted under section 701
6 for relief arising from the conduct of a manufacturer, dis-
7 tributor, or retailer that is a signatory to the National To-
8 bacco Control Protocol under section 612 that occurs after
9 the date of enactment of this Act.

10 (b) GENERAL PROVISIONS.—The provisions of sub-
11 sections (c) and (e) through (i) of section 702 shall apply
12 to actions under this section.

13 (c) THIRD-PARTY PAYOR CLAIMS.—Third-party
14 payor claims that are not based on subrogation shall not
15 be commenced under this section.

16 **SEC. 604. NON-PARTICIPATING MANUFACTURERS.**

17 The provisions of this title shall not apply to any
18 manufacturer, distributor, or retailer that is not a signa-
19 tory to the National Tobacco Control Protocol under sec-
20 tion 612.

21 **TITLE VII—PUBLIC DISCLOSURE**
22 **OF HEALTH RESEARCH**

23 **SEC. 701. PURPOSE.**

24 It is the purpose of this title to provide for the dislo-
25 sure of previously nonpublic or confidential documents by

1 manufacturers of tobacco products, including the results
2 of internal health research, and to provide for a procedure
3 to settle claims of attorney-client privilege, work product,
4 or trade secrets with respect to such documents.

5 **SEC. 702. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

6 (a) ESTABLISHMENT.—To be eligible to receive the
7 protections provided under title VII, manufacturers of to-
8 bacco products, acting in conjunction with the Tobacco In-
9 stitute and the Council for Tobacco Research, U.S.A.
10 (prior to the termination of such entities under section
11 155), shall, not later than 180 days after the date of en-
12 actment of this Act, establish and maintain a National To-
13 bacco Document Depository (in this title referred to as
14 the “Depository”). Such Depository shall be located in the
15 Washington, D.C. area and be open to the public.

16 (b) USE OF DEPOSITORY.—The Depository shall be
17 maintained in a manner that permits the Depository to
18 be used as a resource for litigants, public health groups,
19 and any other individuals who have an interest in the cor-
20 porate records and research of the manufacturers concern-
21 ing smoking and health, addiction or nicotine dependency,
22 safer or less hazardous cigarettes, and underage tobacco
23 use and marketing.

1 (c) CONTENTS.—The Depository shall include (and
 2 manufacturers and the Tobacco Institute and the Council
 3 for Tobacco Research, U.S.A. shall provide)—

4 (1) within 180 days of the date of enactment of
 5 this Act, all documents provided by such entities to
 6 plaintiffs in—

7 (A) civil or criminal actions brought by
 8 State attorneys general (including all docu-
 9 ments selected by plaintiffs from the Guilford
 10 Repository of the United Kingdom);

11 (B) Philip Morris Companies Inc.’s defa-
 12 mation action against Capital Cities/American
 13 Broadcasting Company News;

14 (C) the Federal Trade Commission’s inves-
 15 tigation concerning Joe Camel and underage
 16 marketing;

17 (D) the Haines and Cippollone actions;
 18 and

19 (E) the Butler action in Mississippi;

20 (2) within 90 days after the date of enactment
 21 of this Act, any exiting documents discussing or re-
 22 ferring to health research, addiction or dependency,
 23 safer or less hazardous cigarettes, studies of the
 24 smoking habits of minors, and the relationship be-
 25 tween advertising or promotion and youth smoking,

1 that the entities described in subsection (a) have not
2 completed producing as required in the actions de-
3 scribed in paragraph (1);

4 (3) within 180 days of the date of enactment of
5 this Act, all documents relating to indices (as de-
6 fined by the court in the Minnesota Attorney Gen-
7 eral action) of documents relating to smoking and
8 health, including all indices identified by the manu-
9 facturers in the Washington, Texas, and Minnesota
10 Attorney General actions;

11 (4) upon the settlement of any action referred
12 to in this subsection, and after a good-faith, de novo,
13 document-by-document review of all documents pre-
14 viously withheld from production in any actions on
15 the grounds of attorney-client privilege, all docu-
16 ments determined to be outside of the scope of the
17 privilege;

18 (5) all existing or future documents relating to
19 original laboratory research concerning the health or
20 safety of tobacco products, including all laboratory
21 research results relating to methods used to make
22 tobacco products less hazardous to consumers;

23 (6) a comprehensive new attorney-client privi-
24 lege log of all documents, itemized in sufficient de-
25 tail so as to enable any interested individual to de-

1 termine whether the individual will challenge the
2 claim of privilege, that the entities described in sub-
3 section (a) (based on the de novo review of such doc-
4 uments by such entities) claim are protected from
5 disclosure under the attorney-client privilege;

6 (7) all existing or future documents relating to
7 studies of the smoking habits of minors or docu-
8 ments referring to any relationship between advertis-
9 ing and promotion and underage smoking; and

10 (8) all other documents determined appropriate
11 under regulations promulgated by the Secretary.

12 (d) DISPUTE RESOLUTION PANEL.—

13 (1) ESTABLISHMENT.—The Judicial Conference
14 of the United States shall establish a Tobacco Docu-
15 ments Dispute Resolution Panel, to be composed of
16 three Federal judges to be appointed by the Con-
17 ference, to resolve all disputes involving claims of at-
18 torney-client, work product, or trade secrets privilege
19 with respect to documents required to be deposited
20 into the Depository under subsection (c) that may be
21 brought by Federal, State, or local governmental of-
22 ficials or the public or asserted in any action by a
23 manufacturer.

1 (2) BASIS FOR DETERMINATIONS.—The deter-
2 minations of the Panel established under paragraph
3 (1) shall be based on—

4 (A) the American Bar Association/Amer-
5 ican Law Institute Model Rules or the prin-
6 cipals of Federal law with respect to attorney-
7 client or work product privilege; and

8 (B) the Uniform Trade Secrets Act with
9 respect to trade secrecy.

10 (3) DECISION.—Any decision of the Panel es-
11 tablished under paragraph (1) shall be final and
12 binding upon all Federal and State courts.

13 (4) ASSESSING OF FEES.—As part of a deter-
14 mination under this subsection, the Panel estab-
15 lished under paragraph (1) shall determined whether
16 a claimant of the privilege acted in good faith and
17 had a factual and legal basis for asserting the claim.
18 If the Panel determines that the claimant did not
19 act in good faith, the Panel may assess costs against
20 the claimant, including a reasonable attorneys' fee,
21 and may apply such other sanctions as the Panel de-
22 termines appropriate.

23 (5) ACCELERATED REVIEW.—The Panel estab-
24 lished under paragraph (1) shall establish proce-
25 dures for the accelerated review of challenges to a

1 claim of privilege. Such procedures shall include as-
2 surances that an individual filing a challenge to such
3 a claim need not make a prima facie showing of any
4 kind as a prerequisite to an in camera review of the
5 documents at issue.

6 (6) SPECIAL MASTERS.—The Panel established
7 under paragraph (1) may appoint Special Masters in
8 accordance with Rule 53 of the Federal Rules of
9 Civil Procedure. The cost relating to any Special
10 Master shall be assessed to the manufacturers as
11 part of a fee process to be established under regula-
12 tions promulgated by the Secretary.

13 (e) OTHER PROVISIONS.—

14 (1) NO WAIVER OF PRIVILEGE.—Compliance
15 with this section by the entities described in sub-
16 section (a) shall not be deemed to be a waiver on be-
17 half of such entities of any applicable privilege or
18 protection.

19 (2) AVOIDANCE OF DESTRUCTION.—In estab-
20 lishing the Depository, procedures shall be imple-
21 mented to protect against the destruction of docu-
22 ments.

23 (3) DEEMED PRODUCED.—Any documents con-
24 tained in the Depository shall be deemed to have

1 been produced for purposes of any tobacco-related
2 litigation in the United States.

3 (f) DOCUMENTS.—For purposes of this section, the
4 term “documents” shall include any paper documents that
5 may be printed using data that is contained in computer
6 files.

7 **TITLE VIII—ASSISTANCE TO TO-**
8 **BACCO GROWERS AND COM-**
9 **MUNITIES**

10 **SEC. 801. SHORT TITLE.**

11 This title may be cited as the “Long-Term Economic
12 Assistance for Farmers Act” or the “LEAF Act”.

13 **SEC. 802. DEFINITIONS.**

14 In this title:

15 (1) ACTIVE TOBACCO PRODUCER.—The term
16 “active tobacco producer” means a quota holder,
17 quota lessee, or quota tenant.

18 (2) QUOTA HOLDER.—The term “quota holder”
19 means a producer that owns a farm for which a to-
20 bacco farm marketing quota or farm acreage allot-
21 ment was established under the Agricultural Adjust-
22 ment Act of 1938 (7 U.S.C. 1281 et seq.) for any
23 of the 1994, 1995, or 1996 crop years.

24 (3) QUOTA LESSEE.—The term “quota lessee”
25 means—

1 (A) a producer that owns a farm that pro-
2 duced tobacco pursuant to a lease and transfer
3 to that farm of all or part of a tobacco farm
4 marketing quota or farm acreage allotment es-
5 tablished under the Agricultural Adjustment
6 Act of 1938 (7 U.S.C. 1281 et seq.) for any of
7 the 1994, 1995, or 1996 crop years; or

8 (B) a producer that rented land from a
9 farm operator to produce tobacco under a to-
10 bacco farm marketing quota or farm acreage al-
11 lotment established under the Agricultural Ad-
12 justment Act of 1938 (7 U.S.C. 1281 et seq.)
13 for any of the 1994, 1995, or 1996 crop years.

14 (4) QUOTA TENANT.—The term “quota tenant”
15 means a producer who—

16 (A) is the principal producer, as deter-
17 mined by the Secretary, of tobacco on a farm
18 where tobacco is produced pursuant to a to-
19 bacco farm marketing quota or farm acreage al-
20 lotment established under the Agricultural Ad-
21 justment Act of 1938 (7 U.S.C. 1281 et seq.)
22 for any of the 1994, 1995, or 1996 crop years;
23 and

24 (B) is not a quota holder or quota lessee.

1 (5) SECRETARY.—The term “Secretary”
2 means—

3 (A) in titles I and II, the Secretary of Ag-
4 riculture; and

5 (B) in section 301, the Secretary of Labor.

6 (6) TOBACCO PRODUCT IMPORTER.—The term
7 “tobacco product importer” has the meaning given
8 the term “importer” in section 5702 of the Internal
9 Revenue Code of 1986.

10 (7) TOBACCO PRODUCT MANUFACTURER.—

11 (A) IN GENERAL.—The term “tobacco
12 product manufacturer” has the meaning given
13 the term “manufacturer of tobacco products” in
14 section 5702 of the Internal Revenue Code of
15 1986.

16 (B) EXCLUSION.—The term “tobacco
17 product manufacturer” does not include a per-
18 son that manufactures cigars or pipe tobacco.

19 (8) TRUST FUND.—The term “Trust Fund”
20 means the Tobacco Community Revitalization Trust
21 Fund established under section 101.

1 **Subtitle A—Tobacco Community**
 2 **Revitalization Trust Fund**

3 **SEC. 811. ESTABLISHMENT OF TRUST FUND.**

4 (a) IN GENERAL.—There is established in the Treas-
 5 ury of the United States a trust fund to be known as the
 6 “Tobacco Community Revitalization Trust Fund”, con-
 7 sisting of such amounts as may be appropriated or cred-
 8 ited to the Trust Fund. The Trust Fund shall be adminis-
 9 tered by the Secretary.

10 (b) TRANSFERS TO TRUST FUND.—There are appro-
 11 priated and transferred to the Trust Fund for each fiscal
 12 year—

13 (1) amounts contributed by tobacco product
 14 manufacturers and tobacco product importers under
 15 section 102; and

16 (2) amounts made available to the Trust Fund
 17 out of funds allocated through national tobacco set-
 18 tlement legislation.

19 (c) REPAYABLE ADVANCES.—

20 (1) AUTHORIZATION.—There are authorized to
 21 be appropriated to the Trust Fund, as repayable ad-
 22 vances, such sums as may from time to time be nec-
 23 essary to make expenditures under subsection (d).

24 (2) REPAYMENT WITH INTEREST.—Repayable
 25 advances made to the Trust Fund shall be repaid,

1 and interest on the advances shall be paid, to the
2 general fund of the Treasury when the Secretary of
3 the Treasury determines that moneys are available
4 in the Trust Fund to make the payments.

5 (3) RATE OF INTEREST.—Interest on an ad-
6 vance made under this subsection shall be at a rate
7 determined by the Secretary of the Treasury (as of
8 the close of the calendar month preceding the month
9 in which the advance is made) that is equal to the
10 current average market yield on outstanding market-
11 able obligations of the United States with remaining
12 period to maturity comparable to the anticipated pe-
13 riod during which the advance will be outstanding.

14 (d) EXPENDITURES FROM TRUST FUND.—Amounts
15 in the Trust Fund shall be available for making expendi-
16 tures after October 1, 1998, to meet those necessary obli-
17 gations of the Federal Government that are authorized to
18 be paid under—

19 (1) section 201 for payments for lost tobacco
20 quota for each of fiscal years 1999 through 2023,
21 but not to exceed \$1,600,000,000 for any fiscal year
22 except to the extent the payments are made in ac-
23 cordance with section 201(j);

1 (2) section 202 for industry payments for all
2 costs of the Department of Agriculture associated
3 with the production of tobacco;

4 (3) section 203 for tobacco community eco-
5 nomic development grants, but not to exceed—

6 (A) \$400,000,000 for each of fiscal years
7 1999 through 2008, less any amount required
8 to be paid under section 202 for the fiscal year;
9 and

10 (B) \$450,000,000 for each of fiscal year
11 2009 through 2023, less any amount required
12 to be paid under section 202 during the fiscal
13 year;

14 (4) section 301 for assistance provided under
15 the tobacco worker transition program, but not to
16 exceed \$50,000,000 for any fiscal year; and

17 (5) subpart 9 of part A of title IV of the High-
18 er Education Act of 1965 for farmer opportunity
19 grants, but not to exceed—

20 (A) \$42,500,000 for each of the academic
21 years 1999–2000 through 2003–2004;

22 (B) \$50,000,000 for each of the academic
23 years 2004–2005 through 2008–2009;

24 (C) \$57,500,000 for each of the academic
25 years 2009–2010 through 2013–2014;

1 (D) \$65,000,000 for each of the academic
2 years 2014–2015 through 2018–2019; and

3 (E) \$72,500,000 for each of the academic
4 years 2019–2020 through 2023–2024.

5 (e) BUDGETARY TREATMENT.—This section con-
6 stitutes budget authority in advance of appropriations
7 Acts and represents the obligation of the Federal Govern-
8 ment to provide payments to States and eligible persons
9 in accordance with this title.

10 **SEC. 812. CONTRIBUTIONS BY TOBACCO PRODUCT MANU-**
11 **FACTURERS AND IMPORTERS.**

12 (a) DEFINITION OF MARKET SHARE.—In this sec-
13 tion, the term “market share” means the ratio of—

14 (1) the tax liability of a tobacco product manu-
15 facturer or tobacco product importer (as defined in
16 section 2) for a calendar year under section 5703 of
17 the Internal Revenue Code of 1986; to

18 (2) the tax liability of all tobacco product man-
19 ufacturers or tobacco product importers (as defined
20 in section 2) for the calendar year under section
21 5703 of the Internal Revenue Code of 1986.

22 (b) DETERMINATIONS.—Not later than September
23 30 of each fiscal year, the Secretary of the Treasury
24 shall—

25 (1) determine—

1 (A) the market share of each tobacco prod-
 2 uct manufacturer or tobacco product importer
 3 during the most recent calendar year;

4 (B) the total amount of assessments pay-
 5 able for the subsequent fiscal year under sub-
 6 section (c); and

7 (C) the amount of an assessment payable
 8 by the tobacco product manufacturer or tobacco
 9 product importer for the fiscal year under sub-
 10 section (d); and

11 (2) notify each tobacco product manufacturer
 12 and tobacco product importer of the determinations
 13 made under paragraph (1) with respect to the manu-
 14 facturer or importer.

15 (c) TOTAL AMOUNT OF ASSESSMENTS.—

16 (1) IN GENERAL.—The total amount of assess-
 17 ments payable by all tobacco product manufacturers
 18 and tobacco product importers into the Trust Fund
 19 for a fiscal year shall be equal to—

20 (A) the amount of the contribution to the
 21 Trust Fund for the fiscal year required under
 22 paragraph (2); less

23 (B) any amount made available during the
 24 preceding fiscal year to the Trust Fund out of

1 funds allocated through national tobacco settle-
2 ment legislation.

3 (2) TRUST FUND CONTRIBUTIONS.—The
4 amount of the contribution to the Trust Fund shall
5 be—

6 (A) \$2,100,000,000 for each of fiscal years
7 1999 through 2008;

8 (B) \$500,000,000 for each of fiscal years
9 2009 through 2023; and

10 (C) for fiscal year 2024 and each subse-
11 quent fiscal year, the amount payable under
12 section 202.

13 (d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The
14 amount of an assessment payable by each tobacco product
15 manufacturer and tobacco product importer into the Trust
16 Fund for a fiscal year shall be equal to the product ob-
17 tained by multiplying—

18 (1) the total amount of assessments payable by
19 all tobacco product manufacturers and tobacco prod-
20 uct importers for the fiscal year under subsection
21 (c); by

22 (2) the market share of the tobacco product
23 manufacturer or tobacco product importer during
24 the most recent calendar year determined under sub-
25 section (b)(1)(A).

1 **Subtitle B—Agricultural Market**
2 **Transition Assistance**

3 **SEC. 821. PAYMENTS FOR LOST TOBACCO QUOTA.**

4 (a) IN GENERAL.—Beginning with the 1999 market-
5 ing year, the Secretary shall make payments for lost to-
6 bacco quota to eligible quota holders, quota lessees, and
7 quota tenants as reimbursement for lost tobacco quota as
8 a result of a decrease in demand for domestically produced
9 tobacco.

10 (b) ELIGIBILITY.—To be eligible to receive payments
11 under this section, a quota holder, quota lessee, or quota
12 tenant shall—

13 (1) prepare and submit to the Secretary an ap-
14 plication at such time, in such manner, and contain-
15 ing such information as the Secretary may require,
16 including information sufficient to make the dem-
17 onstration required under paragraph (2); and

18 (2) demonstrate to the satisfaction of the Sec-
19 retary that, with respect to the 1996 marketing
20 year—

21 (A) the producer was a quota holder and
22 realized income from the production of tobacco
23 through—

24 (i) the active production of tobacco;

1 (ii) the lease and transfer of tobacco
2 quota to another farm;

3 (iii) the rental of all or part of the
4 farm of the quota holder, including the
5 right to produce tobacco, to another to-
6 bacco producer; or

7 (iv) the hiring of a quota tenant to
8 produce tobacco;

9 (B) the producer was a quota lessee; or

10 (C) the producer was a quota tenant.

11 (c) BASE QUOTA LEVEL.—

12 (1) IN GENERAL.—The Secretary shall deter-
13 mine, for each quota holder, quota lessee, and quota
14 tenant, the base quota level for the 1994 through
15 1996 marketing years.

16 (2) QUOTA HOLDERS.—The base quota level for
17 a quota holder shall be equal to the average tobacco
18 farm marketing quota established for the farm
19 owned by the quota holder for the 1994 through
20 1996 marketing years.

21 (3) QUOTA LESSEES.—The base quota level for
22 a quota lessee shall be equal to—

23 (A) 50 percent of the average number of
24 pounds of tobacco quota established for a farm
25 for the 1994 through 1996 marketing years—

1 (i) that was leased and transferred to
2 a farm owned by the quota lessee; or

3 (ii) for which the rights to produce
4 the tobacco were rented to the quota les-
5 see; less

6 (B) 25 percent of the average number of
7 pounds of tobacco quota described in paragraph
8 (A) for which a quota tenant was the principal
9 producer of the tobacco quota.

10 (4) QUOTA TENANTS.—The base quota level for
11 a quota tenant shall be equal to the sum of—

12 (A) 50 percent of the average number of
13 pounds of tobacco quota established for a farm
14 for the 1994 through 1996 marketing years—

15 (i) that was owned by a quota holder;
16 and

17 (ii) for which the quota tenant was
18 the principal producer of the tobacco on
19 the farm; and

20 (B) 25 percent of the average number of
21 pounds of tobacco quota for the 1994 through
22 1996 marketing years—

23 (i)(I) that was leased and transferred
24 to a farm owned by the quota lessee; or

1 (II) for which the rights to produce
 2 the tobacco were rented to the quota les-
 3 see; and

4 (ii) for which the quota tenant was
 5 the principal producer of the tobacco on
 6 the farm.

7 (5) MARKETING QUOTAS OTHER THAN POUND-
 8 AGE QUOTAS.—For each kind of tobacco for which
 9 there is a marketing quota or allotment (on an acre-
 10 age basis), the base quota level for each quota hold-
 11 er, quota lessee, or quota tenant shall be determined
 12 in accordance with this subsection (based on a
 13 poundage conversion) in an amount equal to the
 14 product obtained by multiplying—

15 (A) the average tobacco farm marketing
 16 quota or allotment for the 1994 through 1996
 17 marketing years; by

18 (B) the average county yield per acre for
 19 the county in which the farm is located for the
 20 kind of tobacco for the marketing years.

21 (d) PAYMENTS.—Except as otherwise provided in this
 22 section, during any marketing year in which the national
 23 marketing quota for a kind of tobacco is less than the av-
 24 erage national marketing quota level for the kind of to-
 25 bacco for the 1994 through 1996 marketing years, the

1 Secretary shall make payments for lost tobacco quota to
 2 each quota holder, quota lessee, and quota tenant that is
 3 eligible under subsection (b) in an amount that is equal
 4 to the product obtained by multiplying—

5 (1) the percentage by which the national mar-
 6 keting quota for the kind of tobacco is less than the
 7 average national marketing quota level for the kind
 8 of tobacco for the 1994 through 1996 marketing
 9 years; by

10 (2) the base quota level for the quota holder,
 11 quota lessee, or quota tenant; by

12 (3) \$4 per pound.

13 (e) LIFETIME LIMITATION ON PAYMENTS.—Except
 14 as otherwise provided in this section, the total amount of
 15 payments made under this section to a quota holder, quota
 16 lessee, or quota tenant during the lifetime of the holder,
 17 lessee, or tenant shall not exceed the product obtained by
 18 multiplying—

19 (1) the base quota level for the quota holder,
 20 quota lessee, or quota tenant; by

21 (2) \$8 per pound.

22 (f) LIMITATIONS ON AGGREGATE ANNUAL PAY-
 23 MENTS.—

24 (1) IN GENERAL.—Except as otherwise pro-
 25 vided in this subsection, the total amount payable

1 under this section for any marketing year shall not
2 exceed \$1,600,000,000.

3 (2) ACCELERATED PAYMENTS.—Paragraph (1)
4 shall not apply if accelerated payments for lost to-
5 bacco quota are made in accordance with subsection
6 (j).

7 (3) REDUCTIONS.—If the amount determined
8 under subsection (d) for a marketing year exceeds
9 the amount described in paragraph (1), the Sec-
10 retary shall make a pro rata reduction in the
11 amounts payable to quota holders, quota lessees, and
12 quota tenants under this section to ensure that the
13 total amount of the payments for lost tobacco quota
14 does not exceed the limitation established under
15 paragraph (1).

16 (4) ROLLOVER OF PAYMENTS FOR LOST TO-
17 BACCO QUOTA.—Subject to paragraph (1), if the
18 Secretary makes a reduction in accordance with
19 paragraph (3), the amount of the reduction shall be
20 applied to the next marketing year and added to the
21 payments for lost tobacco for the marketing year.

22 (g) SUBSEQUENT SALE AND TRANSFER OF
23 QUOTA.—Effective beginning January 1, 1999, on the
24 sale and transfer of a farm marketing quota under section

1 316(g) or 319(g) of the Agricultural Adjustment Act of
2 1938 (7 U.S.C. 1314b(g), 1314e(g))—

3 (1) the person who sold and transferred the
4 quota shall have—

5 (A) the base quota level attributable to the
6 person reduced by the base quota level attrib-
7 utable to the quota that is sold and transferred;
8 and

9 (B) the lifetime limitation on payments es-
10 tablished under subsection (e) attributable to
11 the person reduced by the product obtained by
12 multiplying—

13 (i) the base quota level attributable to
14 the quota; by

15 (ii) \$8 per pound; and

16 (2) the person who acquired the quota shall
17 have—

18 (A) the base quota level attributable to the
19 person increased by the base quota level attrib-
20 utable to the quota that was sold and trans-
21 ferred; and

22 (B) the lifetime limitation on payments es-
23 tablished under subsection (e) attributable to
24 the person—

1 (i) increased by the product obtained
 2 by multiplying—

3 (I) the base quota level attrib-
 4 utable to the quota; by

5 (II) \$8 per pound; but

6 (ii) decreased by any payments for
 7 lost tobacco quota previously made that
 8 are attributable to the quota that was sold
 9 and transferred.

10 (h) SALE OR TRANSFER OF FARM.—On the sale or
 11 transfer of ownership of a farm that is owned by a quota
 12 holder, the base quota level established under subsection
 13 (c), the right to payments under subsection (d), and the
 14 lifetime limitation on payments established under sub-
 15 section (e) shall transfer to the new owner of the farm
 16 to the same extent and in the same manner as those sub-
 17 sections applied to the previous quota holder.

18 (i) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—
 19 If a quota lessee or quota tenant who is entitled to pay-
 20 ments under this section dies and is survived by a spouse
 21 or 1 or more dependents, the right to receive the payments
 22 shall transfer to the surviving spouse or, if there is no
 23 surviving spouse, to the surviving dependents in equal
 24 shares.

25 (j) ACCELERATION OF PAYMENTS.—

1 (1) IN GENERAL.—On the occurrence of any of
 2 the events described in paragraph (2), the Secretary
 3 shall make an accelerated lump sum payment for
 4 lost tobacco quota to each quota holder, quota les-
 5 see, and quota tenant for any affected kind of to-
 6 bacco in accordance with paragraph (3).

7 (2) TRIGGERING EVENTS.—The Secretary shall
 8 make accelerated payments under paragraph (1) if
 9 after the date of enactment of this title—

10 (A) for 3 consecutive marketing years, the
 11 national marketing quota for a kind of tobacco
 12 is less than 50 percent of the national market-
 13 ing quota for the kind of tobacco for the 1996
 14 marketing year; or

15 (B) Congress repeals or makes ineffective,
 16 directly or indirectly, any provision of—

17 (i) section 316(g) of the Agricultural
 18 Adjustment Act of 1938 (7 U.S.C.
 19 1314b(g));

20 (ii) section 319(g) of the Agricultural
 21 Adjustment Act of 1938 (7 U.S.C.
 22 1314e(g));

23 (iii) section 106 of the Agricultural
 24 Act of 1949 (7 U.S.C. 1445);

1 (iv) section 106A of the Agricultural
2 Act of 1949 (7 U.S.C. 1445–1); or

3 (v) section 106B of the Agricultural
4 Act of 1949 (7 U.S.C. 1445–2).

5 (3) AMOUNT.—The amount of the accelerated
6 payments made to each quota holder, quota lessee,
7 and quota tenant under this subsection shall be
8 equal to—

9 (A) the amount of the lifetime limitation
10 established for the quota holder, quota lessee,
11 or quota tenant under subsection (e); less

12 (B) any payments for lost tobacco quota
13 received by the quota holder, quota lessee, or
14 quota tenant before the occurrence of any of
15 the events described in paragraph (2).

16 **SEC. 822. INDUSTRY PAYMENTS FOR ALL DEPARTMENT**
17 **COSTS ASSOCIATED WITH TOBACCO PRODUC-**
18 **TION.**

19 (a) IN GENERAL.—The Secretary shall use such
20 amounts as are necessary from the Trust Fund at the end
21 of each fiscal year to reimburse the Secretary for—

22 (1) costs associated with the administration of
23 programs established under this title and amend-
24 ments made by this title;

1 (2) costs associated with the administration of
2 the tobacco quota and price support programs ad-
3 ministered by the Secretary;

4 (3) costs to the Federal Government of carrying
5 out crop insurance programs for tobacco;

6 (4) costs associated with all agricultural re-
7 search, extension, or education activities associated
8 with tobacco;

9 (5) costs associated with the administration of
10 loan association and cooperative programs for to-
11 bacco producers, as approved by the Secretary; and

12 (6) any other costs incurred by the Department
13 of Agriculture associated with the production of to-
14 bacco.

15 (b) LIMITATIONS.—Amounts made available under
16 subsection (a) may not be used—

17 (1) to provide direct benefits to quota holders,
18 quota lessees, or quota tenants; or

19 (2) in a manner that results in a decrease, or
20 an increase relative to other crops, in the amount of
21 the crop insurance premiums assessed to active to-
22 bacco producers under the Federal Crop Insurance
23 Act (7 U.S.C. 1501 et seq.).

1 (c) DETERMINATIONS.—Not later than September
 2 30, 1998, and each fiscal year thereafter, the Secretary
 3 shall determine—

4 (1) the amount of costs described in subsection
 5 (a); and

6 (2) the amount that will be provided under this
 7 section as reimbursement for the costs.

8 **SEC. 823. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
 9 **MENT GRANTS.**

10 (a) AUTHORITY.—The Secretary shall make grants to
 11 tobacco-growing States in accordance with this section to
 12 enable the States to carry out economic development ini-
 13 tiatives in tobacco-growing communities.

14 (b) APPLICATION.—To be eligible to receive payments
 15 under this section, a State shall prepare and submit to
 16 the Secretary an application at such time, in such manner,
 17 and containing such information as the Secretary may re-
 18 quire, including—

19 (1) a description of the activities that the State
 20 will carry out using amounts received under the
 21 grant;

22 (2) a designation of an appropriate State agen-
 23 cy to administer amounts received under the grant;
 24 and

1 (3) a description of the steps to be taken to en-
2 sure that the funds are distributed in accordance
3 with subsection (e).

4 (c) AMOUNT OF GRANT.—

5 (1) IN GENERAL.—From the amounts available
6 to carry out this section for a fiscal year, the Sec-
7 retary shall allot to each State an amount that bears
8 the same ratio to the amounts available as the total
9 income of the State derived from the production of
10 tobacco during the 1994 through 1996 marketing
11 years (as determined under paragraph (2)) bears to
12 the total income of all States derived from the pro-
13 duction of tobacco during the 1994 through 1996
14 marketing years.

15 (2) TOBACCO INCOME.—For the 1994 through
16 1996 marketing years, the Secretary shall determine
17 the amount of income derived from the production
18 of tobacco in each State and in all States.

19 (d) PAYMENTS.—

20 (1) IN GENERAL.—A State that has an applica-
21 tion approved by the Secretary under subsection (b)
22 shall be entitled to a payment under this section in
23 an amount that is equal to its allotment under sub-
24 section (c).

1 (2) FORM OF PAYMENTS.—The Secretary may
 2 make payments under this section to a State in in-
 3 stallments, and in advance or by way of reimburse-
 4 ment, with necessary adjustments on account of
 5 overpayments or underpayments, as the Secretary
 6 may determine.

7 (3) REALLOTMENTS.—Any portion of the allot-
 8 ment of a State under subsection (c) that the Sec-
 9 retary determines will not be used to carry out this
 10 section in accordance with an approved State appli-
 11 cation required under subsection (b), shall be reallocot-
 12 ted by the Secretary to other States in proportion to
 13 the original allotments to the other States.

14 (e) USE AND DISTRIBUTION OF FUNDS.—

15 (1) IN GENERAL.—Amounts received by a State
 16 under this section shall be used to carry out eco-
 17 nomic development activities, including—

18 (A) rural business enterprise activities de-
 19 scribed in subsections (c) and (e) of section
 20 310B of the Consolidated Farm and Rural De-
 21 velopment Act (7 U.S.C. 1932);

22 (B) down payment loan assistance pro-
 23 grams that are similar to the program described
 24 in section 310E of the Consolidated Farm and
 25 Rural Development Act (7 U.S.C. 1935);

1 (C) activities designed to help create pro-
2 ductive farm or off-farm employment in rural
3 areas to provide a more viable economic base
4 and enhance opportunities for improved in-
5 comes, living standards, and contributions by
6 rural individuals to the economic and social de-
7 velopment of tobacco communities;

8 (D) activities that expand existing infra-
9 structure, facilities, and services to capitalize on
10 opportunities to diversify economies in tobacco
11 communities and that support the development
12 of new industries or commercial ventures;

13 (E) activities by agricultural organizations
14 that provide assistance directly to active tobacco
15 producers to assist in developing other agricul-
16 tural activities that supplement tobacco-produc-
17 ing activities;

18 (F) initiatives designed to create or expand
19 locally owned value-added processing and mar-
20 keting operations in tobacco communities; and

21 (G) technical assistance activities by per-
22 sons to support farmer-owned enterprises, or
23 agriculture-based rural development enterprises,
24 of the type described in section 252 or 253 of
25 the Trade Act of 1974 (19 U.S.C. 2342, 2343).

1 (2) TOBACCO-GROWING COUNTIES.—Assistance
 2 may be provided by a State under this section only
 3 to assist a county in the State that has been deter-
 4 mined by the Secretary to have in excess of
 5 \$100,000 in income derived from the production of
 6 tobacco during 1 or more of the 1994 through 1996
 7 marketing years.

8 (3) DISTRIBUTION.—

9 (A) ECONOMIC DEVELOPMENT ACTIVI-
 10 TIES.—Not less than 20 percent of the amounts
 11 received by a State under this section shall be
 12 used to carry out—

13 (i) economic development activities de-
 14 scribed in subparagraph (E) or (F) of
 15 paragraph (1); or

16 (ii) agriculture-based rural develop-
 17 ment activities described in paragraph
 18 (1)(G).

19 (B) TECHNICAL ASSISTANCE ACTIVI-
 20 TIES.—Not less than 4 percent of the amounts
 21 received by a State under this section shall be
 22 used to carry out technical assistance activities
 23 described in paragraph (1)(G).

24 (C) TOBACCO-GROWING COUNTIES.—To be
 25 eligible to receive payments under this section,

1 a State shall demonstrate to the Secretary that
 2 funding will be provided, during each 5-year pe-
 3 riod for which funding is provided under this
 4 section, for activities in each county in the
 5 State that has been determined under para-
 6 graph (2) to have in excess of \$100,000 in in-
 7 come derived from the production of tobacco, in
 8 amounts that are at least equal to the product
 9 obtained by multiplying—

10 (i) the ratio that the tobacco produc-
 11 tion income in the county determined
 12 under paragraph (2) bears to the total to-
 13 bacco production income for the State de-
 14 termined under subsection (c); by

15 (ii) 50 percent of the total amounts
 16 received by a State under this section dur-
 17 ing the 5-year period.

18 (f) PREFERENCES IN HIRING.—A State may require
 19 recipients of funds under this section to provide a pref-
 20 erence in employment to—

21 (1) an individual who—

22 (A) during the 1996 calendar year, was
 23 employed in the manufacture, processing, or
 24 warehousing of tobacco or tobacco products, or

1 resided, in a county described in subsection
2 (e)(2); and

3 (B) is eligible for assistance under the to-
4 bacco worker transition program established
5 under section 301; or

6 (2) an individual who—

7 (A) during the 1996 marketing year, car-
8 ried out tobacco quota or relevant tobacco pro-
9 duction activities in a county described in sub-
10 section (e)(2);

11 (B) is eligible for a farmer opportunity
12 grant under subpart 9 of part A of title IV of
13 the Higher Education Act of 1965; and

14 (C) has successfully completed a course of
15 study at an institution of higher education.

16 **SEC. 824. MODIFICATIONS IN FEDERAL TOBACCO PRO-**
17 **GRAMS.**

18 (a) PROGRAM REFERENDA.—Section 312(c) of the
19 Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c))
20 is amended—

21 (1) by striking “(c) Within thirty” and insert-
22 ing the following:

23 “(c) REFERENDA ON QUOTAS.—

24 “(1) IN GENERAL.—Not later than 30”; and

25 (2) by adding at the end the following:

1 “(2) REFERENDA ON PROGRAM CHANGES.—

2 “(A) IN GENERAL.—In the case of any
3 kind of tobacco for which marketing quotas are
4 in effect, on the receipt of a petition from more
5 than 5 percent of the producers of that kind of
6 tobacco in a State, the Secretary shall conduct
7 a statewide referendum on any proposal related
8 to the lease and transfer of tobacco quota with-
9 in a State requested by the petition that is au-
10 thorized under this part.

11 “(B) APPROVAL OF PROPOSALS.—If a ma-
12 jority of producers of the kind of tobacco in the
13 State approve a proposal in a referendum con-
14 ducted under subparagraph (A), the Secretary
15 shall implement the proposal in a manner that
16 applies to all producers and quota holders of
17 that kind of tobacco in the State.”.

18 (b) PURCHASE REQUIREMENTS.—Section 320B of
19 the Agricultural Adjustment Act of 1938 (7 U.S.C.
20 1314h) is amended—

21 (1) in subsection (c), by striking paragraph (1)
22 and inserting the following:

23 “(1) 105 percent of the average market price
24 for the kind of tobacco involved during the preceding
25 marketing year; by”; and

1 (2) by striking subsection (d) and inserting the
2 following:

3 “(d) USE OF PENALTY PAYMENTS.—An amount
4 equivalent to each penalty collected by the Secretary under
5 this section shall be transmitted by the Secretary to the
6 Secretary of the Treasury for deposit in the Tobacco Com-
7 munity Revitalization Trust Fund established under sec-
8 tion 101 of the LEAF Act.”.

9 (c) ELIMINATION OF TOBACCO MARKETING ASSESS-
10 MENT.—

11 (1) IN GENERAL.—Section 106 of the Agricul-
12 tural Act of 1949 (7 U.S.C. 1445(g)) is amended by
13 striking subsection (g).

14 (2) CONFORMING AMENDMENT.—Section
15 422(c) of the Uruguay Round Agreements Act (Pub-
16 lic Law 103–465; 7 U.S.C. 1445 note) is amended
17 by striking “section 106(g), 106A, or 106B of the
18 Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–
19 1, or 1445–2)” and inserting “section 106A or
20 106B of the Agricultural Act of 1949 (7 U.S.C.
21 1445–1, 1445–2)”.

22 **Subtitle C—Farmer and Worker** 23 **Transition Assistance**

24 **SEC. 831. TOBACCO WORKER TRANSITION PROGRAM.**

25 (a) GROUP ELIGIBILITY REQUIREMENTS.—

1 (1) CRITERIA.—A group of workers (including
 2 workers in any firm or subdivision of a firm involved
 3 in the manufacture, processing, or warehousing of
 4 tobacco or tobacco products) shall be certified as eli-
 5 gible to apply for adjustment assistance under this
 6 section pursuant to a petition filed under subsection
 7 (b) if the Secretary of Labor determines that a sig-
 8 nificant number or proportion of the workers in such
 9 workers' firm or an appropriate subdivision of the
 10 firm have become totally or partially separated, or
 11 are threatened to become totally or partially sepa-
 12 rated, and—

13 (A) the sales or production, or both, of
 14 such firm or subdivision have decreased abso-
 15 lutely; and

16 (B) the implementation of the national to-
 17 bacco settlement contributed importantly to
 18 such workers' separation or threat of separation
 19 and to the decline in the sales or production of
 20 such firm or subdivision.

21 (2) DEFINITION OF CONTRIBUTED IMPOR-
 22 TANTLY.—In paragraph (1)(B), the term “contrib-
 23 uted importantly” means a cause that is important
 24 but not necessarily more important than any other
 25 cause.

1 (3) REGULATIONS.—The Secretary shall issue
2 regulations relating to the application of the criteria
3 described in paragraph (1) in making preliminary
4 findings under subsection (b) and determinations
5 under subsection (c).

6 (b) PRELIMINARY FINDINGS AND BASIC ASSIST-
7 ANCE.—

8 (1) FILING OF PETITIONS.—A petition for cer-
9 tification of eligibility to apply for adjustment assist-
10 ance under this section may be filed by a group of
11 workers (including workers in any firm or subdivi-
12 sion of a firm involved in the manufacture, process-
13 ing, or warehousing of tobacco or tobacco products)
14 or by their certified or recognized union or other
15 duly authorized representative with the Governor of
16 the State in which such workers' firm or subdivision
17 thereof is located.

18 (2) FINDINGS AND ASSISTANCE.—Upon receipt
19 of a petition under paragraph (1), the Governor
20 shall—

21 (A) notify the Secretary that the Governor
22 has received the petition;

23 (B) within 10 days after receiving the peti-
24 tion—

1 (i) make a preliminary finding as to
 2 whether the petition meets the criteria de-
 3 scribed in subsection (a)(1); and

4 (ii) transmit the petition, together
 5 with a statement of the finding under
 6 clause (i) and reasons for the finding, to
 7 the Secretary for action under subsection
 8 (c); and

9 (C) if the preliminary finding under sub-
 10 paragraph (B)(i) is affirmative, ensure that
 11 rapid response and basic readjustment services
 12 authorized under other Federal laws are made
 13 available to the workers.

14 (c) REVIEW OF PETITIONS BY SECRETARY; CERTIFI-
 15 CATIONS.—

16 (1) IN GENERAL.—The Secretary, within 30
 17 days after receiving a petition under subsection
 18 (b)(2)(B)(ii), shall determine whether the petition
 19 meets the criteria described in subsection (a)(1).
 20 Upon a determination that the petition meets such
 21 criteria, the Secretary shall issue to workers covered
 22 by the petition a certification of eligibility to apply
 23 for the assistance described in subsection (d).

24 (2) DENIAL OF CERTIFICATION.—Upon the de-
 25 nial of a certification with respect to a petition

1 under paragraph (1), the Secretary shall review the
2 petition in accordance with the requirements of
3 other applicable assistance programs to determine if
4 the workers may be certified under such other provi-
5 sions.

6 (d) COMPREHENSIVE ASSISTANCE.—

7 (1) IN GENERAL.—Workers covered by a certifi-
8 cation issued by the Secretary under subsection
9 (c)(1) shall be provided with benefits and services
10 described in paragraph (2) in the same manner and
11 to the same extent as workers covered under a cer-
12 tification under subchapter A of title II of the Trade
13 Act of 1974 (19 U.S.C. 2271 et seq.), except that
14 the total amount of payments under this section for
15 any fiscal year shall not exceed \$50,000,000.

16 (2) BENEFITS AND SERVICES.—The benefits
17 and services described in this paragraph are the fol-
18 lowing:

19 (A) Employment services of the type de-
20 scribed in section 235 of the Trade Act of 1974
21 (19 U.S.C. 2295).

22 (B) Training described in section 236 of
23 the Trade Act of 1974 (19 U.S.C. 2296), ex-
24 cept that notwithstanding the provisions of sec-
25 tion 236(a)(2)(A) of such Act, the total amount

1 of payments for training under this section for
2 any fiscal year shall not exceed \$25,000,000.

3 (C) Tobacco worker readjustment allow-
4 ances, which shall be provided in the same man-
5 ner as trade readjustment allowances are pro-
6 vided under part I of subchapter B of chapter
7 2 of title II of the Trade Act of 1974 (19
8 U.S.C. 2291 et seq.), except that—

9 (i) the provisions of sections
10 231(a)(5)(C) and 231(c) of such Act (19
11 U.S.C. 2291(a)(5)(C), 2291(c)), authoriz-
12 ing the payment of trade readjustment al-
13 lowances upon a finding that it is not fea-
14 sible or appropriate to approve a training
15 program for a worker, shall not be applica-
16 ble to payment of allowances under this
17 section; and

18 (ii) notwithstanding the provisions of
19 section 233(b) of such Act (19 U.S.C.
20 2293(b)), in order for a worker to qualify
21 for tobacco readjustment allowances under
22 this section, the worker shall be enrolled in
23 a training program approved by the Sec-
24 retary of the type described in section

1 236(a) of such Act (19 U.S.C. 2296(a)) by
2 the later of—

3 (I) the last day of the 16th week
4 of such worker's initial unemployment
5 compensation benefit period; or

6 (II) the last day of the 6th week
7 after the week in which the Secretary
8 issues a certification covering such
9 worker.

10 In cases of extenuating circumstances re-
11 lating to enrollment of a worker in a train-
12 ing program under this section, the Sec-
13 retary may extend the time for enrollment
14 for a period of not to exceed 30 days.

15 (D) Job search allowances of the type de-
16 scribed in section 237 of the Trade Act of 1974
17 (19 U.S.C. 2297).

18 (E) Relocation allowances of the type de-
19 scribed in section 238 of the Trade Act of 1974
20 (19 U.S.C. 2298).

21 (e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-
22 MENTS FOR LOST TOBACCO QUOTA.—No benefits or serv-
23 ices may be provided under this section to any individual
24 who has received payments for lost tobacco quota under
25 section 201.

1 (f) FUNDING.—Of the amounts in the Trust Fund,
2 the Secretary may use not to exceed \$50,000,000 for each
3 of fiscal years 1999 through 2008 to provide assistance
4 under this section.

5 (g) EFFECTIVE DATE.—This section shall take effect
6 on the date that is the later of—

7 (1) October 1, 1998; or

8 (2) the date on which legislation implementing
9 the national tobacco settlement is enacted.

10 (h) TERMINATION DATE.—No assistance, vouchers,
11 allowances, or other payments may be provided under this
12 section after the date that is the earlier of—

13 (1) the date that is 10 years after the effective
14 date of this section under subsection (g); or

15 (2) the date on which legislation establishing a
16 program providing dislocated workers with com-
17 prehensive assistance substantially similar to the as-
18 sistance provided by this section becomes effective.

19 **SEC. 832. FARMER OPPORTUNITY GRANTS.**

20 Part A of title IV of the Higher Education Act of
21 1965 (20 U.S.C. 1070 et seq.) is amended by adding at
22 the end the following:

1 **“Subpart 9—Farmer Opportunity Grants**

2 **“SEC. 420D. STATEMENT OF PURPOSE.**

3 “It is the purpose of this subpart to assist in making
4 available the benefits of postsecondary education to eligi-
5 ble students (determined in accordance with section 420F)
6 in institutions of higher education by providing farmer op-
7 portunity grants to all eligible students.

8 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
9 **MINATIONS; APPLICATIONS.**

10 “(a) PROGRAM AUTHORITY AND METHOD OF
11 DISTRIBUTION.—

12 “(1) PROGRAM AUTHORITY.—From amounts
13 made available under section 101(d)(5) of the LEAF
14 Act, the Secretary, during the period beginning July
15 1, 1999, and ending September 30, 2024, shall pay
16 to each eligible institution such sums as may be nec-
17 essary to pay to each eligible student (determined in
18 accordance with section 420F) for each academic
19 year during which that student is in attendance at
20 an institution of higher education, as an under-
21 graduate, a farmer opportunity grant in the amount
22 for which that student is eligible, as determined pur-
23 suant to subsection (b). Not less than 85 percent of
24 such sums shall be advanced to eligible institutions
25 prior to the start of each payment period and shall
26 be based upon an amount requested by the institu-

tion as needed to pay eligible students, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

“(2) CONSTRUCTION.—Nothing in this section shall be construed to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which the students are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

“(3) DESIGNATION.—Grants made under this subpart shall be known as ‘farmer opportunity grants’.

“(b) AMOUNT OF GRANTS.—

“(1) AMOUNTS.—

“(A) IN GENERAL.—The amount of the grant for a student eligible under this subpart shall be—

“(i) \$1,700 for each of the academic years 1999–2000 through 2003–2004;

“(ii) \$2,000 for each of the academic years 2004–2005 through 2008–2009;

“(iii) \$2,300 for each of the academic years 2009–2010 through 2013–2014;

1 “(iv) \$2,600 for each of the academic
2 years 2014–2015 through 2018–2019; and

3 “(v) \$2,900 for each of the academic
4 years 2019–2020 through 2023–2024.

5 “(B) PART-TIME RULE.—In any case
6 where a student attends an institution of higher
7 education on less than a full-time basis (includ-
8 ing a student who attends an institution of
9 higher education on less than a half-time basis)
10 during any academic year, the amount of the
11 grant for which that student is eligible shall be
12 reduced in proportion to the degree to which
13 that student is not so attending on a full-time
14 basis, in accordance with a schedule of reduc-
15 tions established by the Secretary for the pur-
16 poses of this subparagraph, computed in ac-
17 cordance with this subpart. Such schedule of re-
18 ductions shall be established by regulation and
19 published in the Federal Register.

20 “(2) MAXIMUM.—No grant under this subpart
21 shall exceed the cost of attendance (as described in
22 section 472) at the institution at which that student
23 is in attendance. If, with respect to any student, it
24 is determined that the amount of a grant exceeds
25 the cost of attendance for that year, the amount of

1 the grant shall be reduced to an amount equal to the
 2 cost of attendance at such institution.

3 “(3) PROHIBITION.—No grant shall be awarded
 4 under this subpart to any individual who is incarcerated
 5 in any Federal, State, or local penal institution.

6 “(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

7 “(1) IN GENERAL.—The period during which a
 8 student may receive grants shall be the period re-
 9 quired for the completion of the first undergraduate
 10 baccalaureate course of study being pursued by that
 11 student at the institution at which the student is in
 12 attendance, except that any period during which the
 13 student is enrolled in a noncredit or remedial course
 14 of study as described in paragraph (2) shall not be
 15 counted for the purpose of this paragraph.

16 “(2) CONSTRUCTION.—Nothing in this section
 17 shall be construed to—

18 “(A) exclude from eligibility courses of
 19 study that are noncredit or remedial in nature
 20 and that are determined by the institution to be
 21 necessary to help the student be prepared for
 22 the pursuit of a first undergraduate baccalaureate
 23 degree or certificate or, in the case of
 24 courses in English language instruction, to be
 25 necessary to enable the student to utilize al-

1 ready existing knowledge, training, or skills;
2 and

3 “(B) exclude from eligibility programs of
4 study abroad that are approved for credit by
5 the home institution at which the student is
6 enrolled.

7 “(3) PROHIBITION.—No student is entitled to
8 receive farmer opportunity grant payments concu-
9 rently from more than 1 institution or from the Sec-
10 retary and an institution.

11 “(d) APPLICATIONS FOR GRANTS.—

12 “(1) IN GENERAL.—The Secretary shall from
13 time to time set dates by which students shall file
14 applications for grants under this subpart. The filing
15 of applications under this subpart shall be coordi-
16 nated with the filing of applications under section
17 401(c).

18 “(2) INFORMATION AND ASSURANCES.—Each
19 student desiring a grant for any year shall file with
20 the Secretary an application for the grant containing
21 such information and assurances as the Secretary
22 may deem necessary to enable the Secretary to carry
23 out the Secretary’s functions and responsibilities
24 under this subpart.

1 “(e) DISTRIBUTION OF GRANTS TO STUDENTS.—

2 Payments under this section shall be made in accordance
3 with regulations promulgated by the Secretary for such
4 purpose, in such manner as will best accomplish the pur-
5 pose of this section. Any disbursement allowed to be made
6 by crediting the student’s account shall be limited to tui-
7 tion and fees and, in the case of institutionally owned
8 housing, room and board. The student may elect to have
9 the institution provide other such goods and services by
10 crediting the student’s account.

11 “(f) INSUFFICIENT FUNDING.—If, for any fiscal
12 year, the funds made available to carry out this subpart
13 from the Tobacco Community Revitalization Trust Fund
14 are insufficient to satisfy fully all grants for students de-
15 termined to be eligible under section 420F, the amount
16 of the grant provided under subsection (b) shall be re-
17 duced on a pro rata basis among all eligible students.

18 “(g) TREATMENT OF INSTITUTIONS AND STUDENTS
19 UNDER OTHER LAWS.—Any institution of higher edu-
20 cation that enters into an agreement with the Secretary
21 to disburse to students attending that institution the
22 amounts those students are eligible to receive under this
23 subpart shall not be deemed, by virtue of such agreement,
24 to be a contractor maintaining a system of records to ac-
25 complish a function of the Secretary. Recipients of farmer

1 opportunity grants shall not be considered to be individual
2 grantees for purposes of the Drug-Free Workplace Act of
3 1988 (41 U.S.C. 701 et seq.).

4 **“SEC. 420F. STUDENT ELIGIBILITY.**

5 “(a) IN GENERAL.—In order to receive any grant
6 under this subpart, a student shall—

7 “(1) be a member of a tobacco farm family in
8 accordance with subsection (b);

9 “(2) be enrolled or accepted for enrollment in
10 a degree, certificate, or other program (including a
11 program of study abroad approved for credit by the
12 eligible institution at which such student is enrolled)
13 leading to a recognized educational credential at an
14 institution of higher education that is an eligible in-
15 stitution in accordance with section 487, and not be
16 enrolled in an elementary or secondary school;

17 “(3) if the student is presently enrolled at an
18 institution of higher education, be maintaining satis-
19 factory progress in the course of study the student
20 is pursuing in accordance with subsection (c);

21 “(4) not owe a refund on grants previously re-
22 ceived at any institution of higher education under
23 this title, or be in default on any loan from a stu-
24 dent loan fund at any institution provided for in
25 part D, or a loan made, insured, or guaranteed by

1 the Secretary under this title for attendance at any
2 institution;

3 “(5) file with the institution of higher education
4 that the student intends to attend, or is attending,
5 a document, that need not be notarized, but that
6 shall include—

7 “(A) a statement of educational purpose
8 stating that the money attributable to such
9 grant will be used solely for expenses related
10 to attendance or continued attendance at such
11 institution; and

12 “(B) such student’s social security num-
13 ber; and

14 “(6) be a citizen of the United States.

15 “(b) TOBACCO FARM FAMILIES.—

16 “(1) IN GENERAL.—For the purpose of sub-
17 section (a)(1), a student is a member of a tobacco
18 farm family if during calendar year 1996 the stu-
19 dent was—

20 “(A) an individual who—

21 “(i) is an active tobacco producer (as
22 defined in section 2 of the LEAF Act); or

23 “(ii) is otherwise actively engaged in
24 the production of tobacco;

1 “(B) a spouse, son, daughter, stepson, or
2 stepdaughter of an individual described in sub-
3 paragraph (A);

4 “(C) an individual—

5 “(i) who was a brother, sister, step-
6 brother, stepsister, son-in-law, or daughter-
7 in-law of an individual described in sub-
8 paragraph (A); and

9 “(ii) whose principal place of resi-
10 dence was the home of the individual de-
11 scribed in subparagraph (A); or

12 “(D) an individual who was a dependent
13 (within the meaning of section 152 of the Inter-
14 nal Revenue Code of 1986) of an individual de-
15 scribed in subparagraph (A).

16 “(2) ADMINISTRATION.—On request, the Sec-
17 retary of Agriculture shall provide to the Secretary
18 such information as is necessary to carry out this
19 subsection.

20 “(c) SATISFACTORY PROGRESS.—

21 “(1) IN GENERAL.—For the purpose of sub-
22 section (a)(3), a student is maintaining satisfactory
23 progress if—

24 “(A) the institution at which the student is
25 in attendance reviews the progress of the stu-

1 dent at the end of each academic year, or its
2 equivalent, as determined by the institution;
3 and

4 “(B) the student has at least a cumulative
5 C average or its equivalent, or academic stand-
6 ing consistent with the requirements for grad-
7 uation, as determined by the institution, at the
8 end of the second such academic year.

9 “(2) SPECIAL RULE.—Whenever a student fails
10 to meet the eligibility requirements of subsection
11 (a)(3) as a result of the application of this sub-
12 section and subsequent to that failure the student
13 has academic standing consistent with the require-
14 ments for graduation, as determined by the institu-
15 tion, for any grading period, the student may, sub-
16 ject to this subsection, again be eligible under sub-
17 section (a)(3) for a grant under this subpart.

18 “(3) WAIVER.—Any institution of higher edu-
19 cation at which the student is in attendance may
20 waive paragraph (1) or (2) for undue hardship based
21 on—

22 “(A) the death of a relative of the student;

23 “(B) the personal injury or illness of the
24 student; or

1 “(C) special circumstances as determined
2 by the institution.

3 “(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL
4 GRADUATES.—In order for a student who does not have
5 a certificate of graduation from a school providing second-
6 ary education, or the recognized equivalent of such certifi-
7 cate, to be eligible for any assistance under this subpart,
8 the student shall meet either 1 of the following standards:

9 “(1) EXAMINATION.—The student shall take an
10 independently administered examination and shall
11 achieve a score, specified by the Secretary, dem-
12 onstrating that such student can benefit from the
13 education or training being offered. Such examina-
14 tion shall be approved by the Secretary on the basis
15 of compliance with such standards for development,
16 administration, and scoring as the Secretary may
17 prescribe in regulations.

18 “(2) DETERMINATION.—The student shall be
19 determined as having the ability to benefit from the
20 education or training in accordance with such proc-
21 ess as the State shall prescribe. Any such process
22 described or approved by a State for the purposes of
23 this section shall be effective 6 months after the date
24 of submission to the Secretary unless the Secretary
25 disapproves such process. In determining whether to

1 approve or disapprove such process, the Secretary
2 shall take into account the effectiveness of such
3 process in enabling students without secondary
4 school diplomas or the recognized equivalent to bene-
5 fit from the instruction offered by institutions utiliz-
6 ing such process, and shall also take into account
7 the cultural diversity, economic circumstances, and
8 educational preparation of the populations served by
9 the institutions.

10 “(e) SPECIAL RULE FOR CORRESPONDENCE
11 COURSES.—A student shall not be eligible to receive a
12 grant under this subpart for a correspondence course un-
13 less such course is part of a program leading to an associ-
14 ate, bachelor, or graduate degree.

15 “(f) COURSES OFFERED THROUGH TELECOMMUNI-
16 CATIONS.—

17 “(1) RELATION TO CORRESPONDENCE
18 COURSES.—A student enrolled in a course of in-
19 struction at an eligible institution of higher edu-
20 cation (other than an institute or school that meets
21 the definition in section 521(4)(C) of the Carl D.
22 Perkins Vocational and Applied Technology Edu-
23 cation Act (20 U.S.C. 2471(4)(C))) that is offered
24 in whole or in part through telecommunications and
25 leads to a recognized associate, bachelor, or graduate

1 degree conferred by such institution shall not be
2 considered to be enrolled in correspondence courses
3 unless the total amount of telecommunications and
4 correspondence courses at such institution equals or
5 exceeds 50 percent of such courses.

6 “(2) RESTRICTION OR REDUCTIONS OF FINAN-
7 CIAL AID.—A student’s eligibility to receive a grant
8 under this subpart may be reduced if a financial aid
9 officer determines under the discretionary authority
10 provided in section 479A that telecommunications
11 instruction results in a substantially reduced cost of
12 attendance to such student.

13 “(3) DEFINITION.—For the purposes of this
14 subsection, the term ‘telecommunications’ means the
15 use of television, audio, or computer transmission,
16 including open broadcast, closed circuit, cable,
17 microwave, or satellite, audio conferencing, computer
18 conferencing, or video cassettes or discs, except that
19 such term does not include a course that is delivered
20 using video cassette or disc recordings at such insti-
21 tution and that is not delivered in person to other
22 students of that institution.

23 “(g) STUDY ABROAD.—Nothing in this subpart shall
24 be construed to limit or otherwise prohibit access to study
25 abroad programs approved by the home institution at

1 which a student is enrolled. An otherwise eligible student
2 who is engaged in a program of study abroad approved
3 for academic credit by the home institution at which the
4 student is enrolled shall be eligible to receive a grant under
5 this subpart, without regard to whether such study abroad
6 program is required as part of the student's degree
7 program.

8 “(h) VERIFICATION OF SOCIAL SECURITY NUM-
9 BER.—The Secretary, in cooperation with the Commis-
10 sioner of Social Security, shall verify any social security
11 number provided by a student to an eligible institution
12 under subsection (a)(5)(B) and shall enforce the following
13 conditions:

14 “(1) PENDING VERIFICATION.—Except as pro-
15 vided in paragraphs (2) and (3), an institution shall
16 not deny, reduce, delay, or terminate a student's eli-
17 gibility for assistance under this subpart because so-
18 cial security number verification is pending.

19 “(2) DENIAL OR TERMINATION.—If there is a
20 determination by the Secretary that the social secu-
21 rity number provided to an eligible institution by a
22 student is incorrect, the institution shall deny or ter-
23 minate the student's eligibility for any grant under
24 this subpart until such time as the student provides

1 documented evidence of a social security number
2 that is determined by the institution to be correct.

3 “(3) CONSTRUCTION.—Nothing in this sub-
4 section shall be construed to permit the Secretary to
5 take any compliance, disallowance, penalty, or other
6 regulatory action against—

7 “(A) any institution of higher education
8 with respect to any error in a social security
9 number, unless such error was a result of fraud
10 on the part of the institution; or

11 “(B) any student with respect to any error
12 in a social security number, unless such error
13 was a result of fraud on the part of the
14 student.”.

15 **Subtitle D—Immunity**

16 **SEC. 841. GENERAL IMMUNITY FOR TOBACCO PRODUCERS** 17 **AND WAREHOUSERS.**

18 Notwithstanding any other provision of this title, an
19 active tobacco producer, tobacco-related growers associa-
20 tion, or tobacco warehouse owner or employee may not be
21 subject to liability in any Federal or State court for any
22 cause of action resulting from the failure of any tobacco
23 product manufacturer, distributor, or retailer to comply
24 with national tobacco settlement legislation.

TITLE IX—EFFECTIVE DATES AND OTHER PROVISIONS

SEC. 901. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), and as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) EXCEPTIONS.—The following provisions shall become effective as follows:

(1) The retail tobacco product display provisions under subtitle A of title I shall be applicable to retailers on the date that is 9 months after the date of enactment of this Act.

(2) The provisions relating to the display of tobacco product signs and displays by retailers under subtitle A of title I shall be applicable to retailers on the date that is 5 months after the date of enactment of this Act.

(3) The provisions of subtitle A of title I relating to advertising shall be applicable on the date that is 9 months after the date of enactment of this Act.

(4) The labeling requirements of subtitle A of title I and of chapter 9 of the Federal Food, Drug, and Cosmetic Act (as added by section 143(3) of

1 this Act) shall be applicable (as determined under
2 regulations promulgated by the Secretary) with re-
3 spect to—

4 (A) $\frac{1}{3}$ of all tobacco product packages, on
5 the date that is 90 days after the date of enact-
6 ment of this Act;

7 (B) $\frac{1}{3}$ of all tobacco product packages, on
8 the date that is 120 days after the date of en-
9 actment of this Act; and

10 (C) $\frac{1}{3}$ of all tobacco product packages, on
11 the date that is 180 days after the date of en-
12 actment of this Act.

13 (5) The provisions of section 105 relating to the
14 sponsorship of events shall be applicable on Decem-
15 ber 31, 1998.

16 (6) The provisions of section 121 shall be appli-
17 cable on the date that is 3 months after the date of
18 enactment of this Act.

19 (7) The provisions of section 122 relating to
20 vending machines shall be applicable on the date
21 that is 12 months after the date of enactment of
22 this Act.

23 (8) The provisions of section 122 relating to
24 minimum package size shall be applicable on the

1 date that is 3 months after the date of enactment
2 of this Act.

3 (9) The provisions of section 122 relating to
4 vending machines shall be applicable on the date
5 that is 12 months after the date of enactment of
6 this Act.

7 (10) The provisions of section 122 relating to
8 sampling shall be applicable on the date that is 3
9 months after the date of enactment of this Act.

10 (11) The provisions of section 909 of the Fed-
11 eral Food, Drug and Cosmetic Act (as added by sec-
12 tion 143(3) of this Act) relating to good manufac-
13 turing practices shall be applicable on the date that
14 is 24 months after the date of enactment of this Act
15 or on a date determined appropriate by the Sec-
16 retary.

17 (12) The provisions of subtitle F of title I relat-
18 ing to corporate compliance shall be applicable on
19 the date that is 12 months after the date of enact-
20 ment of this Act.

21 **SEC. 902. NATIVE AMERICANS.**

22 (a) INDIAN COUNTRY.—The provisions of this Act (or
23 an amendment made by this Act) shall apply to the manu-
24 facture, distribution, and sale of tobacco products within
25 Indian country.

1 (b) INDIAN TRIBES.—To the extent that an Indian
2 tribe or tribal organization engages in the manufacture,
3 distribution, or sale of tobacco products, the provisions of
4 this Act (or an amendment made by this Act) shall apply
5 to such tribe or organization.

6 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
7 or tribal organization that engages in the manufacture of
8 tobacco products shall be subject to liability under section
9 402, or shall be considered a non-participating manufac-
10 turer for purposes of section 613, and shall be subject to
11 surcharges under section 205.

12 (d) APPLICATION OF FDA REQUIREMENTS.—

13 (1) IN GENERAL.—The Secretary shall promul-
14 gate regulations to provide for the application of the
15 requirements of the Food, Drug and Cosmetic Act
16 to tobacco products manufactured, distributed, or
17 sold within Indian country.

18 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
19 regulations promulgated under paragraph (1), the
20 Secretary may provide assistance to an Indian tribe
21 or tribal organization in meeting and enforcing the
22 requirements under such regulations if—

23 (A) the tribe or organization has a govern-
24 ing body that has powers and carries out duties

1 that are similar to the powers and duties of
2 State or local governments;

3 (B) the functions to be exercised through
4 the use of such assistance relate to activities on
5 lands within the jurisdiction of the tribe or or-
6 ganization; and

7 (C) the tribe or organization is reasonably
8 expected to be capable of carrying out the func-
9 tions required by the Secretary.

10 (e) RETAIL LICENSING REQUIREMENTS.—

11 (1) IN GENERAL.—The requirements of subtitle
12 D of title I shall apply to retailers that sell tobacco
13 products within Indian country.

14 (2) SELF-REGULATION.—The Secretary shall
15 promulgate regulations to permit the Indian tribe or
16 tribal organization with jurisdiction over the lands
17 involved to implement a tribal licensing program
18 that is at least as strict as the program in operation
19 in the State in which the land involved is located.

20 (3) IMPLEMENTATION BY SECRETARY.—If the
21 Secretary determines that the Indian tribe or tribal
22 organization is not qualified to administer the re-
23 quirements of subtitle D of title I, the Secretary
24 shall implement such requirements on behalf of the

1 tribe or organization or delegate such authority to
2 the State involved.

3 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), an Indian tribe or tribal organization
6 shall be considered a State for purposes of eligibility
7 under title V.

8 (2) PUBLIC HEALTH PROGRAM.—

9 (A) IN GENERAL.—Each State that re-
10 ceives a payment under section 502 shall set
11 aside an appropriate portion, as determined
12 under regulations prescribed by the Secretary,
13 of such payment for use by Indian tribes or
14 tribal organizations within the State.

15 (B) AMOUNT.—The amount of any funds
16 under subparagraph (A) for which an Indian
17 tribe or tribal organization is eligible shall be
18 determined by the State based on the propor-
19 tion of the registered members of the tribe in-
20 volved as compared to the total population of all
21 such registered members in the State.

22 (C) USE.—Amounts provided to a tribe or
23 organization under this paragraph shall be used
24 as provided for in section 504 and in accord-
25 ance with a plan submitted by the tribe or orga-

1 nization and approved by the Secretary as being
2 in compliance with this Act.

3 (D) REALLOTMENT.—Any amounts set
4 aside and not expended under this paragraph
5 shall be reallocated among other eligible tribes
6 and organizations.

7 (g) OBLIGATION OF MANUFACTURERS.—

8 (1) PROHIBITION.—A manufacturer shall not
9 engage in any activity within Indian country that is
10 otherwise prohibited under this Act (or an amend-
11 ment made by this Act).

12 (2) LIMITATION ON SALE.—A manufacturer
13 shall not sell or otherwise distribute a tobacco prod-
14 uct for subsequent manufacture, distribution, or sale
15 to an Indian tribe or tribal organization, or provide
16 such products to a manufacturer, distributor, or re-
17 tailer that is subject to the jurisdiction of a tribe or
18 organization, except under the same terms and con-
19 ditions as the manufacturer imposes on other manu-
20 facturers, distributors, or retailers.

21 (h) DEFINITIONS.—In this section:

22 (1) INDIAN COUNTRY.—The term “Indian coun-
23 try” has the meaning given such term by section
24 1151 of title 18, United States Code.

1 (2) INDIAN TRIBE.—The term “Indian tribe”
2 has the meaning given to such term by section 4(e)
3 of the Indian Self-Determination and Education As-
4 sistance Act (25 U.S.C. 450b(e)).

5 (3) TRIBAL ORGANIZATION.—The term “tribal
6 organization” has the meaning given such term in
7 section 4 of the Indian Self Determination and Edu-
8 cation Assistance Act (25 U.S.C. 450b).

9 **SEC. 903. PREEMPTION.**

10 (a) GENERAL PREEMPTION.—Except as otherwise
11 provided for in this section, nothing in this Act shall be
12 construed as prohibiting a State from imposing require-
13 ments, prohibitions, penalties or other measures to further
14 the purposes of this Act that are in addition to the re-
15 quirements, prohibitions, or penalties required under this
16 Act. To the extent not inconsistent with the purposes of
17 this Act, State and local governments may impose addi-
18 tional tobacco product control measures to further restrict
19 or limit the use of such products by minors.

20 (b) ENFORCEMENT.—A State may not impose obliga-
21 tions or requirements relating to the enforcement of this
22 Act in a manner that conflicts with the provisions of title
23 VI.

24 (c) PUBLIC EXPOSURE TO SMOKE.—Nothing in title
25 III shall be construed to preempt or otherwise affect any

1 other Federal, State or local law which provides greater
2 protection from the health hazards of environmental to-
3 bacco smoke.

4 (d) TAXES.—Nothing in this Act shall be construed
5 to prohibit a State from imposing taxes on tobacco prod-
6 ucts or tobacco product manufacturers, distributors, or re-
7 tailers.

8 (e) NATIVE AMERICANS.—Except as provided in sec-
9 tion 902, a State may not impose obligations or require-
10 ments relating to the application of this Act to Indian
11 tribes and tribal organizations.

○